



Agenda Item Memorandum

January 21, 2021

TO: NBEDC Board

FROM: Jeff Jewell, Economic and Community Development Director

RE: Approval of the minutes from the February 23, 2021 and March 3, 2021 Special Called Meetings

Background:

Minutes from the February 23, 2021 and March 3, 2021 special called meetings are included for approval.

Attachments:

February 23, 2021 and March 3, 2021 meeting minutes

New Braunfels Economic Development Corporation

Board of Directors Special Called Meeting

February 23, 2021

Minutes

The New Braunfels Economic Development Corporation January Regular Meeting was called to order on Tuesday, February 23, 2021, at 5:01 p.m. via Zoom Virtual Meeting.

Present: President Kathy Meurin, Vice President Don Austin, Secretary Jim Poage, Director Kristin Carden, Director Neal Linnartz, and Director Stuart Hansmann.

Absent: Treasurer Brian Cox

Chamber Staff: Michael Meek and Chester Jenke

City Staff: City of New Braunfels City Manager Robert Camareno, Assistant City Manager Jordan Matney, Assistant City Manager Kristi Aday, City Attorney Val Acevedo, Asst. City Attorney Nathan Brown, City of New Braunfels Community and Economic Development Director Jeff Jewell, City of New Braunfels Finance Director Jared Werner, and City of New Braunfels Downtown Development Coordinator Amy McWhorter.

Also present was Mayor Rusty Brockman.

1. The meeting was called to order at 5:01 p.m. by President Meurin.
2. A motion to approval the minutes from the January 21, 2021 Regular Meeting was made by Linnartz, a motion second was made by Poage
President Meurin, FOR
Secretary Poage, FOR
Treasurer Austin, FOR
Director Linnartz, FOR
Director Hansmann, FOR
Director Carden, FOR
3. A presentation of the February Treasurer's Report was provided by Werner. Werner overall sales tax collections are up 7.6% and 8.4% with the adjustments. The retail sales are up 9% year over year for the month of December, and the 2021 sales tax projections are up over 2020 estimates.
4. A presentation of the February Advisory Team Report was provided by Meek. The briefing included information on eight new leads since December 8, 10 local business expansion projects; 13 NBEDC (4B) pending projects; 64 "still active"

leads from previous months; the status of the city's five major economic development strategic planning goals; 10 new initiatives; local commercial broker activity; four county projects; eight current marketing initiatives; and seven miscellaneous items.

5. Public hearing, discussion and possible action to approve a proposed project expenditure of up to \$58,000 to the City of New Braunfels for a professional services agreement with Vickrey and Associates, Inc. for preliminary design of the Alligator Creek Trail, an eligible project expenditure related to recreational or community facilities in accordance with Local Government Code Section 505.152 (Jewell) – NO DISCUSSION/ACTION
6. A presentation on strategic initiatives progress and capital financing strategy was provided by Jewell. The proposed funding strategy allows for the board to address and possibly complete those highest ranked strategic priorities from their list – the strategy provides a roadmap forward for the board and staff to follow when project opportunities arise. The two strategies discussed are cash flow to support strategies and design costs and debt issuance for capital investments when appropriate. The Economic Development Board guidance allows for the strategic financing to be moved forward to the next available opportunity at a city council meeting for comment.
7. A discussion for rescheduling the regular March 2021 EDC board meeting due to several board member schedule conflicts was discussed. The motion was made by Linnartz to move the regular March meeting to March 25th to deconflict schedules, the motion was second by Carden – motion passes
President Meurin, FOR
Secretary Poage, FOR
Treasurer Austin, FOR
Director Linnartz, FOR
Director Hansmann, FOR
Director Carden, FOR
8. Committee updates from board members
 - A. Linnartz – NBU Plaza Downtown – 6 applications received for review and scoring by the committee. Scoring will occur before the end of March.
 - B. Meurin – CTTC Advisory Board – there was a concern that the campus is still closed to the public – including workforce training; but other courses are being delivered via a virtual format. It was noted that there is a meeting with the Mayors of NB and Seguin and the City Managers to discuss the direction of the CTTC - meeting date has not been established.
9. President Meurin convened Executive Session at 5:45 p.m.
In accordance with the Texas Government Code, Section 551.071, the Board reserves the right to retire into executive session concerning the items listed on this agenda to consult with its attorney. In addition, the Board may convene in executive session on any of the following items, with any final action being taken in open

session:

A. Deliberate Issues Regarding Economic Development Negotiations in accordance with Section 551.087 of the Texas Government Code.

- Project Broadband
- Project Locked
- CGT

B. Deliberate the purchase, exchange, lease or value of real estate in accordance with Section 551.072 of the Texas Government Code.

- Union Pacific Railroad

The board returned to open session at 6:39 p.m. There were no actions or motions made after Executive Session.

The February special meeting of the New Braunfels Economic Development Corporation Board of Directors was adjourned at 6:40 p.m.

CERTIFICATION

Kathy Meurin
President

Attest:

Jim Poage
Secretary

**New Braunfels Economic Development Corporation
Board of Directors Special Called Meeting
March 3, 2021**

Minutes

The New Braunfels Economic Development Corporation March 3 Special Meeting was called to order on Wednesday, March 3, at 5:02 p.m. via Zoom Virtual Meeting.

Present: President Kathy Meurin, Vice President Don Austin, Secretary Jim Poage, Treasurer Brian Cox, Director Kristin Carden, Director Neal Linnartz, and Director Stuart Hansmann.

Absent: none

Chamber Staff: Michael Meek and Chester Jenke

City Staff: Assistant City Manager Jordan Matney, Asst. City Attorney Nathan Brown, City of New Braunfels Community and Economic Development Director Jeff Jewell, and City of New Braunfels Downtown Development Coordinator Amy McWhorter.

Also present was Mayor Rusty Brockman.

1. A Public hearing was conducted for a proposed project expenditure of up to \$58,000 to the City of New Braunfels for a professional services agreement with Vickrey and Associates, Inc. for preliminary design of the Alligator Creek Trail. This project is an eligible project expenditure related to recreational or community facilities in accordance with Local Government Code Section 505.152. Public hearing was opened at 5:05 p.m., there was no comment from the public and the hearing was closed at 5:06 p.m. A motion was made by Poage to fund up to \$58,000 to the City of New Braunfels for design of the Alligator Creek Trail project the motion second was from Austin. Motion was approved 7-0.

President Meurin, FOR
Vice President Austin, FOR
Secretary Poage, FOR
Treasurer Cox, FOR
Director Linnartz, FOR
Director Hansmann, FOR
Director Carden, FOR

The meeting was adjourned at 5:07 p.m.

CERTIFICATION

Kathy Meurin
President

Attest:

Jim Poage
Secretary

April NBEDC Treasurer's Report

April 15th, 2021

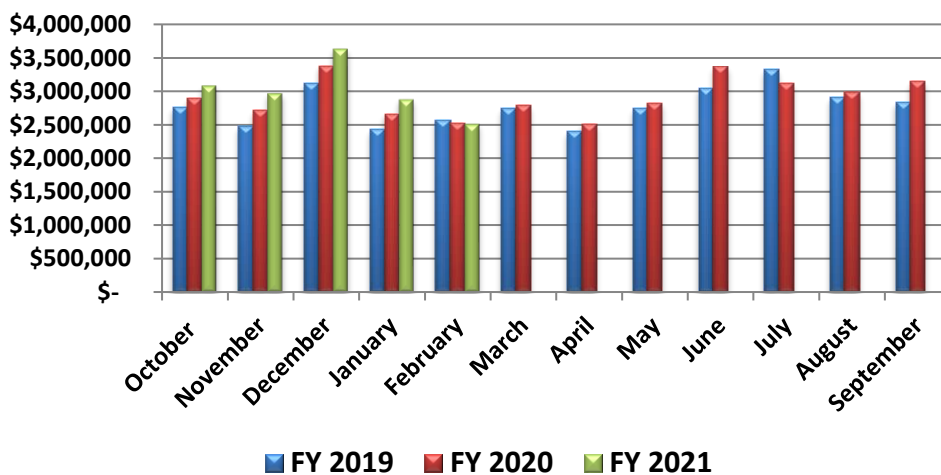
Overview

The Monthly treasurer's report provides updates on sales tax performance, projected revenue streams and projected commitments and timing of expenditures. The financial commitments of the NBEDC typically span multiple fiscal years; therefore, the report is formatted to project the financial position of the NBEDC over the next five years.

Sales Tax

Sales tax collections for the month of February decreased by .1%. When the various adjustments are removed, current to current collections Decreased by 2.3%. At the time this report was completed, our analytics software had not updated the detailed information for February. However, given the impact of the winter storm in February, we are pleasantly surprised by the monthly figures/variance. We believe that March has the potential to produce a sizeable increase in collections due to the purchase of supplies and services to address damage caused by the winter storm. Fiscal year to date (Oct-Feb), collections are still up 6.5% or approximately \$920,000.

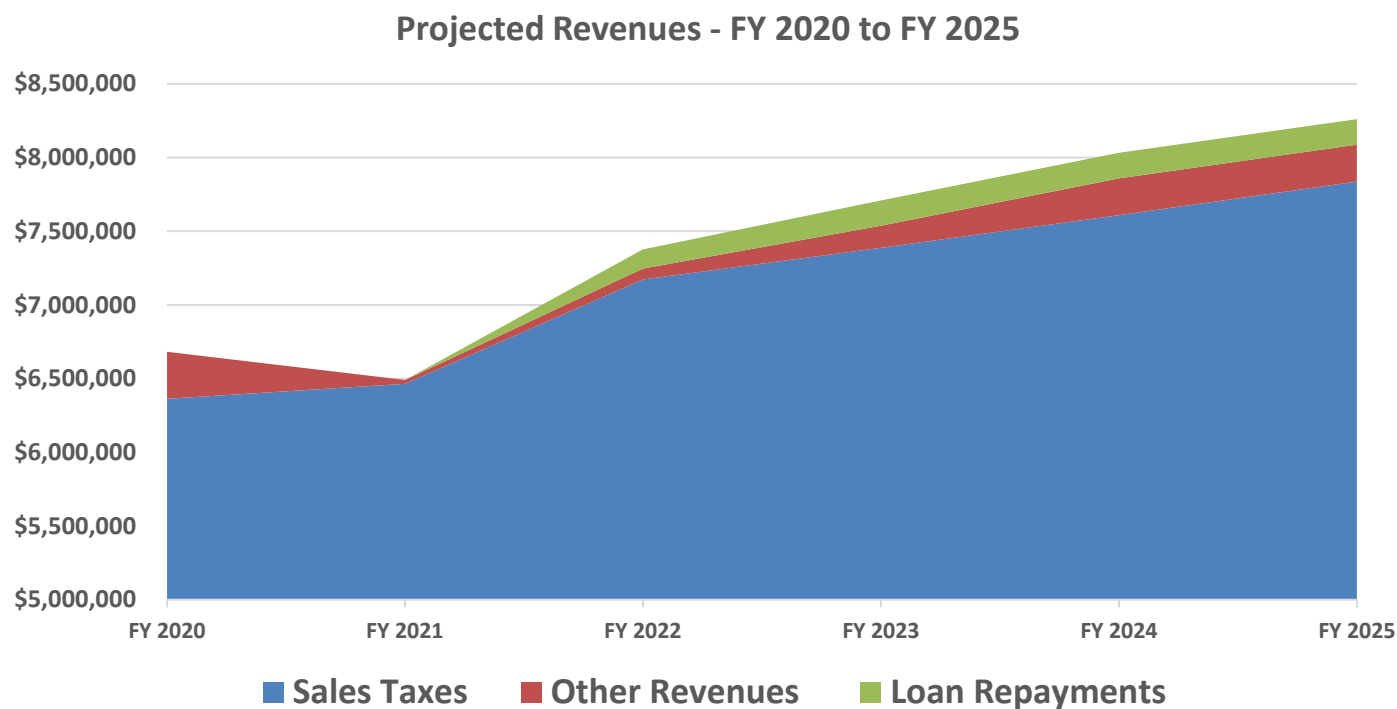
Gross Sales Tax Collections



For more information contact:

Jared Werner
Chief Financial Officer
jwerner@nbtexas.org
830-221-4385

Revenues



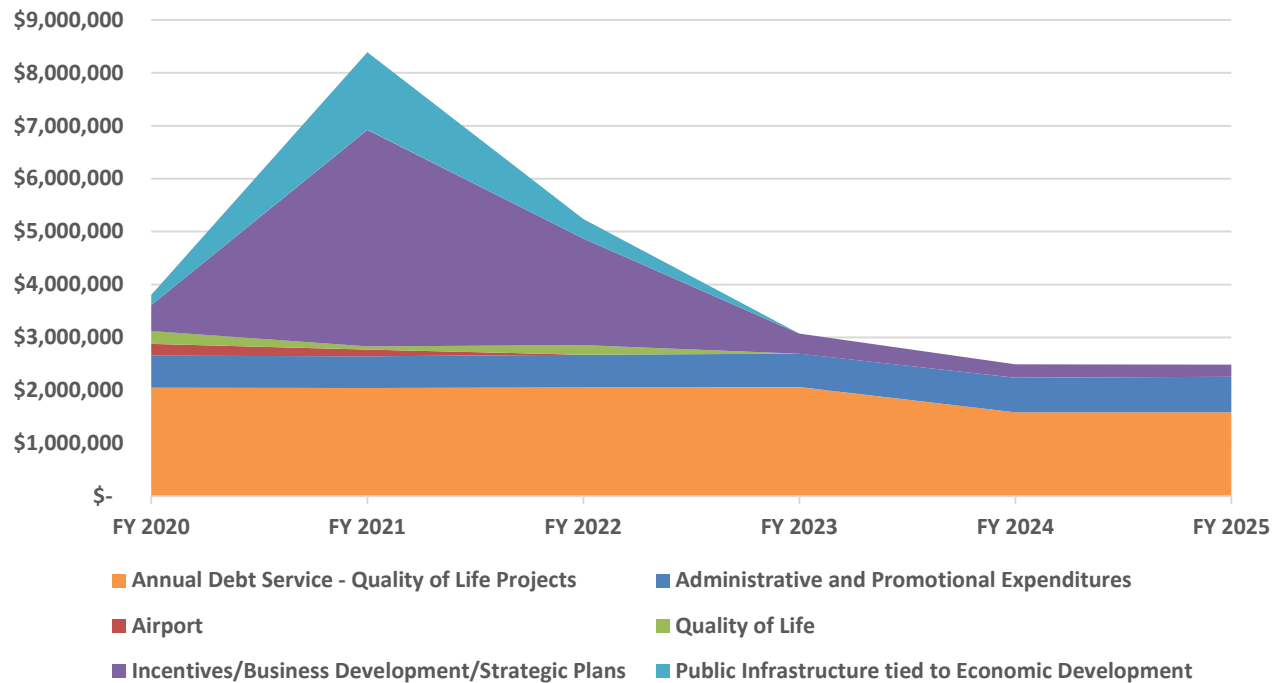
Revenue Projections	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Sales Taxes	\$6,363,136	\$6,466,066	\$7,172,057	\$7,387,219	\$7,608,835	\$7,837,100
Interest Earnings	\$139,342	\$25,000	\$75,000	\$150,000	\$250,000	\$250,625
Loan repayments/reimbursements	\$180,510	\$149,837	\$128,954	\$172,954	\$172,954	\$172,954
Total Revenues	\$6,682,988	\$6,491,066	\$7,376,011	\$7,710,173	\$8,031,789	\$8,260,679

Small Business Grant and Recovery Efforts – A modification to the funding arrangements of an economic incentive contract is necessary to provide the funding for the small business grant (FY 2020) and recovery (FY 2021) programs. The result of the modification will result in a reduction in net sales taxes for FY 2020 and FY 2021. That adjustment is modeled into the graph and table above.

Loan Repayments – The NBEDC is scheduled to begin receiving loan repayments from the New Braunfels Regional Airport in FY 2022 (ten year) and ASA properties in FY 2023 (five years with a balloon payment in year six).

Total NBEDC Expenditures – Current Commitments

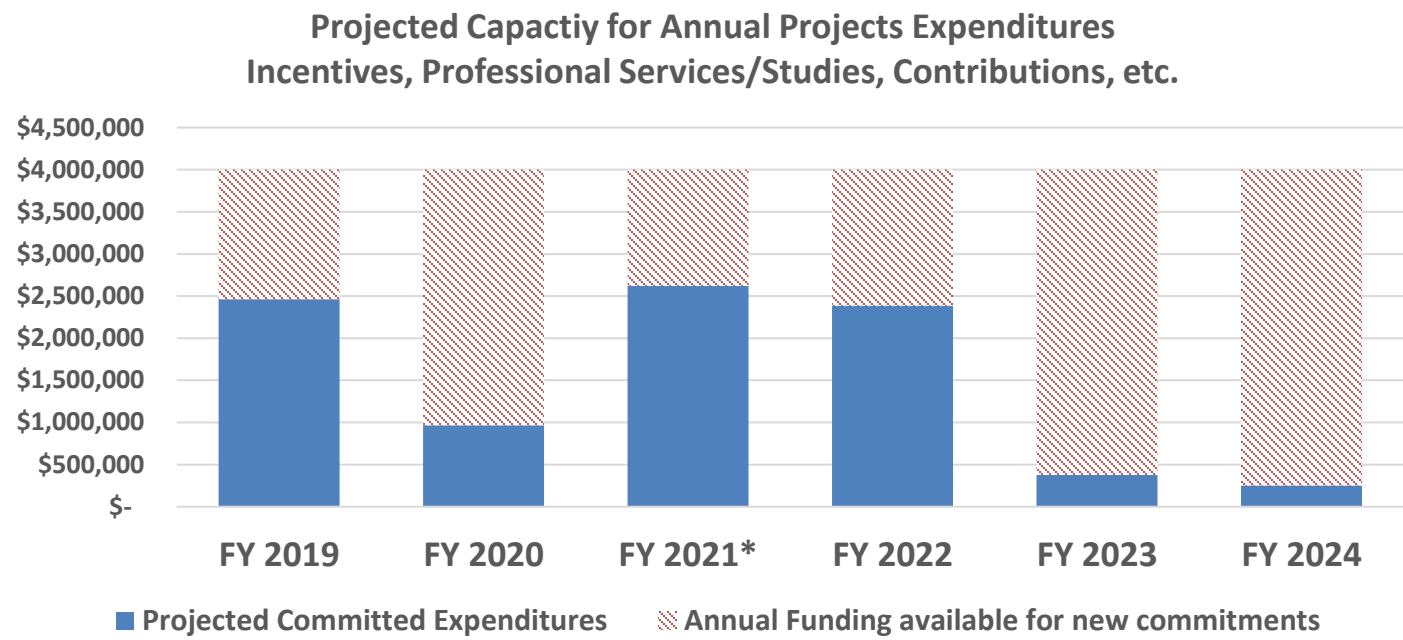
Current Commitment Projections - FY 2020 to FY 2025



Current Commitments	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Admin/Promotional Expenditures	\$605,550	\$597,500	\$615,425	\$633,888	\$652,904	\$672,492
Airport	\$221,839	\$124,884	\$0	\$0	\$0	\$0
Quality of Life	\$63,908	\$183,381	\$0	\$0	\$0	\$0
Incentive/Business Development/Strategic Plans	\$488,600	\$4,087,658	\$2,013,909	\$378,910	\$250,576	\$225,576
Public Infrastructure tied to Economic Development	\$191,307	\$1,467,947	\$370,006	\$0	\$0	\$0
Annual Debt Service	\$2,051,490	\$2,047,719	\$2,057,494	\$2,060,919	\$1,587,044	\$1,586,294
Total Expenditures	\$3,622,693	\$8,509,089	\$5,056,834	\$3,073,717	\$2,490,524	\$2,484,362

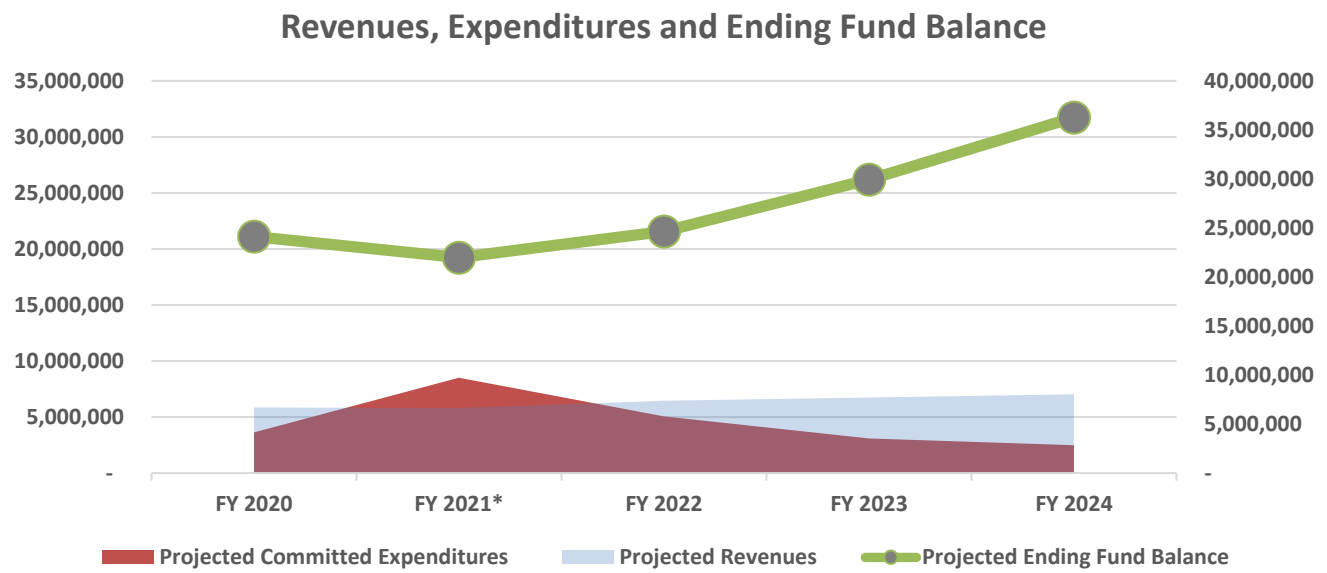
Projections above include all current commitments of the NBEDC – including those most recently approved (Alligator Creek Trail master plan participation). These projections also include the incentive for Continental Automotive, which is projected to be outlaid in FY 2021 and FY 2022.

Annual Capacity for New Commitments



*The graph above assumes that the land grant associated with Continental Automotive is supported by available reserves (FY 2021).

Financial Summary – Revenues, Committed Expenditures and projected Fund Balance (reserves)



*The graph above does not include current non-cash assets such as land and equipment

*The summary above also does not reflect the outstanding \$10 million commitment to the Sports Complex project. The NBEDC has yet to finalize its funding strategy regarding this project.

The graph above summarizes estimated revenues, committed expenditures and changes to fund balance/Reserves (only based on current commitments).



Agenda Item Memorandum

April 15, 2021

TO: NBEDC Board

FROM: Jeff Jewell, Economic and Community Development Director

RE: Agenda Item #5: Public hearing, discussion and possible action approving an expenditure of up to \$400,000 to Frantic Holdings, LLC for a project that will promote or develop new or expanded businesses by delivering high speed broadband infrastructure and services to downtown commercial customers

Background:

Facilitating broadband deployment throughout New Braunfels has been an economic development strategic priority for many years. The EDC and NBU have studied this issue throughout the years and explored various methods to bring greater broadband availability through a variety of means. In May 2020, the EDC contracted with Alk Development Services to oversee the development of the project plan with Frantic Holdings, LLC (Frantic) that would bring broadband services at affordable rates to downtown businesses initially. Broadly, Frantic plans to utilize existing street poles to deliver backbone routes and connections to each building and utilize available city and NBU easement utilities as necessary. The agreement calls for EDC subsidizing a portion of this cost, as well as the "commercial last mile" connection at a total cost of up to \$400,000.

As proposed, there are two primary stages of the broadband project. The first, which is divided into three phases, is to bring the "fiber backbone" or trunk line in proximity to the area that will be served. This backbone is the primary service line where individual connections will be made and the preliminary routes are shown in the image below (in red):



TEL 830.221.4000

FAX 830.608.2109

www.nbtexas.org

550 LANDA ST.

NEW BRAUNFELS, TEXAS 78130

Frantic has worked with NBU to secure pole attachment agreements for permission to attach this main line to NBU’s infrastructure where possible. Where a pole attachment is not possible, Frantic will make other accommodations to advance the trunk line into the downtown area. Ultimately, Frantic anticipates bringing the trunkline into three areas:



Once the backbone line is installed, the EDC will commit a fixed amount of \$1,500 for each newly activated and contracted commercial customer. There are costs associated with physically connecting a customer’s building to the backbone line and the \$1,500 represents an average cost to physically connect a trunkline to a customer’s demarcation point. This connection, referred to as the “Commercial Last Mile” refers to the physical demarcation point from the active customer’s hand-off point to the nearest trunk or backbone line. The subsidy is available for the first 200 commercial customers up to \$300,000. In return, Frantic must provide the commercial service at 1 gigabit or greater synchronous speeds and pricing less than or equal to \$99.00 per month for a 36-month term. Frantic will operate the service and provide the front and back end customer support to the client and the EDC is not involved for this portion of the service.

Fiscal Impact:

The EDC’s proposed fiscal involvement in this endeavor will assist in cost offsets for up to three phases of backbone/trunk line installation at \$100,000 and provide a \$1,500 subsidy for every commercial customer contracted up to \$300,000 (200 commercial customers). Frantic will provide a letter of credit that will step up and down as the EDC’s exposure increases and reduces over time:

Initial Amount at Date of Execution of this Agreement	
After Year 1	\$150,000
After Year 2	\$250,000
After Year 3	\$150,000
After Year 4	\$50,000
After Year 5	No letter of credit required



The schedule assumes Frantic obtains one-hundred active contracted customers within the first year of this Agreement and an additional one-hundred active contracted customers in the second year of this Agreement. If, in the sole opinion of the EDC, the company falls significantly below these numbers, then EDC will adjust these letter of credit amounts in an amount that EDC deems fairly and adequately secures the company's repayment obligations to EDC. The EDC will review the contracted customers on a quarterly basis with Frantic in order to establish the payment due to the Company.

In the event that Frantic is unable or unwilling to complete its obligations under the Agreement, Frantic agrees to grant EDC the first right of refusal to purchase the backbone fiber improvements made pursuant to the Agreement at a price of the fair market value of the improvements less any amount the EDC has granted the company. This helps protect the end user and protect the EDC's investment if Frantic exits the project at some point.

Attachments:

Draft Agreement

CONTRACT BETWEEN THE NEW BRAUNFELS ECONOMIC DEVELOPMENT CORPORATION AND FRANTIC HOLDINGS, LLC.

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF COMAL §

THIS CONTRACTUAL AGREEMENT, is made and entered into by and between the New Braunfels Economic Development Corporation, a Non-Profit Corporation of the State of Texas, hereinafter referred to as "**EDC**", acting by and through its duly authorized officers, and Frantic Holdings, LLC, hereinafter referred to as "**Company**", acting by and through its officers.

W I T N E S S E T H:

WHEREAS, under the authority granted to the EDC by Texas Local Government Code §501.103, EDC recommended this project for approval on April 15, 2021, and the New Braunfels City Council approved it on April 26, 2021; and

WHEREAS, the incentives are offered by the EDC in consideration of the COMPANY fulfilling performance requirements including. Said terms and conditions are further described below.

AGREEMENT

I. COMPANY'S OBLIGATIONS

- (1) Backbone Fiber. The Company shall complete all three phases of backbone fiber, attached hereto as Exhibit A, within two years of the execution of this Agreement. Prior to the design and construction of the backbone fiber, Company shall get approval for backbone fiber routes from the EDC and New Braunfels Utility for any backbone fiber Company seeks reimbursement for from the EDC. Any extension to the completion date shall require prior approval by the EDC.
- (2) Commercial Last Mile. The Company shall make available within two years of Company's first completed service connection at least two-hundred (200) service connections to commercial customers allowing active broadband service at a symmetrical 1Gbps bandwidth at a price of no more than ninety-nine dollars (\$99) per month, excluding federal, state, and local fees and taxes, for a period of at least three years.
- (3) Requests for Reimbursement and Annual Certification
 - (a) Backbone Fiber. Company shall submit requests for reimbursement of costs for engineering, permits, and construction costs incurred by Company for each

phase of the backbone fiber to the EDC within ninety (90) days of completion, as determined by the EDC, of the particular phase and at least thirty (30) days before the first day of the third, sixth, ninth and twelfth months of each calendar year.

(b) **Commercial Last Mile.** Company shall submit to EDC requests for payment for eligible payments for active contracted customers at least thirty (30) days before the first day of the third, sixth, ninth and twelfth months of each calendar year. In Company's requests for payment, Company shall provide documentation sufficient as determined by the EDC to show the number of active contracted customer accounts eligible for payment from the EDC. Notwithstanding the foregoing, Company shall not be required to disclose confidential information of customers.

(4) **Audit**

Company shall permit EDC to audit Company's customer records for each quarter that Company seeks payment from EDC, subject to a notification of 30 days prior to requested access of customer records; provided, however, that the EDC's access to Company's records shall be limited to those records necessary to verify compliance and that the EDC shall treat all such records as confidential information for all purposes including the Texas Public Information Act as applicable and subject to applicable law. For the purposes of this audit provision and the enforcement of any provision of this Agreement, the City of New Braunfels employees shall serve as the EDC's agent.

(5) **Definitions.** For the purposes of this agreement, the following terms will be defined as follows:

- a) **Affiliate** means (1) any entity 50% or more owned or controlled by Company, or any of its principal shareholders or any trust created for their benefit, (2) any entity taking over Company's interest in this Agreement as a result of a merger or consolidation, (3) any entity acquiring all or substantially all of the assets of Company, or (4) any entity which has acquired a majority of the outstanding stock or equity of Company.
- b) **Backbone Fiber** shall mean the fiber cable and strand counts necessary to reach from one major area of service within the City of New Braunfels to the next area of service offerings within the City of New Braunfels. The term includes the fiber cable necessary to reach from point of internet service to Company's head end or service center.
- c) **Commercial Last Mile** refers to the physical demarcation point from the Active Contracted Customer's hand-off point located within the City of New Braunfels to Company's Backbone Fiber or nearest point of fiber service connectivity.
- d) **Active Contracted Customer** means a paying commercial customer to Company located within the City of New Braunfels. A customer shall be deemed to be a commercial customer if the customer is a business or non-profit entity that provides goods or services and uses Company's service for non-residential purposes, or if the customer is otherwise deemed a commercial customer by the EDC.

- e) ***Symmetrical 1Gbps Bandwidth*** shall mean a CAT5e gigabit hand-off with 1 public IPv4 (or IPv6 subnet) fully routed internet connection capable of upload and download throughput of 870Mbps or higher as tested by Speedtest.net or Company provided bandwidth tester. Testing server latency shall not exceed 50ms during the speed test.

II. INCENTIVES

In consideration of the Company meeting the above outlined performance obligations, EDC shall grant Company the following incentives:

- a) **Backbone Fiber.** The EDC shall pay to Company reasonable costs as determined by the EDC, up to a total of \$34,000, for engineering, permits, and construction costs incurred by Company in the completion of the first phase of the backbone fiber, as indicated in Exhibit A, within thirty days of EDC receiving reimbursement request from Company. The EDC shall pay reasonable costs as determined by the EDC, up to a total of \$33,000, for engineering design, permits, and construction costs incurred by Company in the completion of the second phase of the backbone fiber, as indicated in Exhibit A, within thirty days of EDC receiving reimbursement request from Company. The EDC shall pay to Company reasonable costs as determined by the EDC, up to a total of \$33,000, for engineering design, permits, and construction costs incurred by Company in the completion of the third phase, as indicated in Exhibit A, of the backbone fiber within thirty days of EDC receiving reimbursement request from Company. In no event shall EDC pay Company more than \$100,000 total for the completion of the three phases referenced in Exhibit A.
- b) **Commercial Last Mile.** EDC shall pay Company, within thirty days of EDC receiving reimbursement request from Company, a one-time payment of \$1,500 for each of the first two-hundred Active Contracted Customer per service demarcation point that Company provides active-broadband service of at least 1Gbps synchronous speeds at a price of ninety-nine (99) dollars or less per month for a period of no fewer than thirty-six (36) months, up to a total of \$300,000 from the EDC to Company. In no event shall contributions from EDC to Company exceed \$300,000 per this section.

III. RIGHT OF FIRST REFUSAL

In the event that Company is unable or unwilling to complete Company's obligations under this Agreement, Company shall grant EDC the first right of refusal to purchase the backbone fiber improvements made by Company pursuant to this Agreement at a price of the fair market value of the improvements less any amount the EDC has granted Company under section II (a) of this Agreement. Company shall notify EDC of first right of refusal in writing and EDC shall have ninety days from the date of Company's notice to exercise EDC's right of refusal.

IV. LETTER OF CREDIT

Company shall provide security for its repayment obligations in the form of an irrevocable letter of credit. Such letter of credit may be drawn upon by EDC in the event the Company fails to meet any performance requirement outlined in this agreement. Before making demand on the letter of credit, the EDC agrees to submit a demand for payment to the Company. If the Company does not make the demanded payment to the EDC within thirty (30) days following written demand for such payment, the EDC may draw upon the letter of credit. Company shall maintain letter of credit according to the following schedule:

Initial Amount at Date of Execution of this Agreement	
After Year 1	\$150,000
After Year 2	\$250,000
After Year 3	\$150,000
After Year 4	\$50,000
After Year 5	No letter of credit required

The schedule above assumes Company obtains one-hundred active contracted customers within the first year of this Agreement and an additional one-hundred active contracted customers in the second year of this Agreement. If, in the sole opinion of the EDC, the Company falls significantly below these numbers, then EDC will adjust these letter of credit amounts in an amount that EDC deems fairly and adequately secures the Company's repayment obligations to EDC unless EDC and Company agree, in writing, to modify the terms of the Agreement.

V.

Any breach of the terms and conditions of this Agreement by Company, will result in the termination of distribution of funds and immediate repayment of funds paid to Company by EDC unless EDC and Company agree, in writing, to modify the terms of the Agreement. If Company receives a payment from EDC for an active contracted customer but fails to provide the customer with service of a symmetrical 1Gbps bandwidth at a price of no more than ninety-nine dollars (\$99) per month for at least thirty-six (36) consecutive months, then Company shall repay to EDC the amount that Company received from EDC for that active contracted customer within thirty days of EDC's notice of repayment. In the event that an active contracted customer for which Company has received payment from EDC voluntarily terminates its contract with Company, Company will not be held to have failed to provide customer with the service required under this Agreement. In no event shall the amounts repaid by the Company to the EDC under this paragraph and other paragraphs herein ever exceed the value of the payments actually received by the Company from the EDC.

V.

Company shall give EDC no fewer than ninety (90) days' notice upon Company's decision to stop providing service as stipulated in this Agreement.

VI.

In the performance of this contract, Company shall not discriminate against any person because of his/her race, color, religion, national origin, sex, disability or ancestry. Proven breach of this covenant may be regarded as a material breach of the contract causing its termination.

VII.

Chapter 2264 of the Texas Government Code requires Company to certify that Company will agree not to knowingly employ any undocumented workers during the term of the Agreement. If Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company shall repay the amount of the financial incentives it has received from EDC with six percent (6%) interest, at the rate and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies Company of the violation. If convicted, Company shall repay the amount of all financial incentives for the year(s) in which the violation occurred.

VIII.

This Agreement cannot be assigned by Company without the prior written consent of the EDC.

IX.

All communications between EDC and Company shall be addressed to the President of the New Braunfels Economic Development Corporation, c/o City of New Braunfels, 550 Landa Street, New Braunfels, Texas 78130, with a copy being sent to the City of New Braunfels Director of Economic and Community Development at the same address.

Any communication to Company shall be addressed to: Frantic Holdings LLC, 246 W 38th Street, Suite 204 New York, NY 10018

X.

It is understood and agreed that in the event any provision of this contract is inconsistent with requirements of law, the requirements of law will control and the parties shall revert to their respective legal positions which would most closely reflect the parties' intentions in respect to such provision, within the confines of applicable law. In addition, if the Company notifies the EDC that it is unable to satisfy any deadline provided in this Agreement due to adverse economic conditions, the EDC agrees to meet with the

Company to better understand the impact of those adverse economic conditions on the Company and consider making good faith adjustments to the terms of this Agreement to address the impacts of such adverse economic conditions upon the Company

XI.

The foregoing instrument in writing between the parties herein, constitutes the entire agreement between the parties, relative to the funds made the basis hereof, and any other written or oral agreement with the EDC being expressly waived by Company.

DRAFT

IN WITNESS WHEREOF, the parties hereto execute this agreement in duplicate originals on this ____ day of _____, 2021.

NEW BRAUNFELS ECONOMIC
DEVELOPMENT CORPORATION

By: _____
KATHY MEURIN, President

NEW BRAUNFELS ECONOMIC
DEVELOPMENT CORPORATION

By: _____
JIM POAGE, Secretary

By: _____
Frantic Holdings, LLC
Chief Financial Officer

STATE OF _____ §
COUNTY OF _____ §

Before me, _____, on this day personally appeared, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that executed the same as the act of as its Chief Financial Officer, for the purposes and consideration therein expressed.

Subscribed and sworn to before me this ____ day of _____, 2021.

Notary Public, State of

My commission expires:



Agenda Item Memorandum

April 15, 2021

TO: NBEDC Board

FROM: Jeff Jewell, Economic and Community Development Director

RE: Agenda Item #6: Presentation and discussion on a request from Spark Small Business Center for a grant to continue operating as the Small Business Development Center (SBDC) satellite center to the University of Texas at San Antonio's SBDC in New Braunfels.

Background:

A representative from the Spark Small Business Development Center will report on its progress over the last year.



Agenda Item Memorandum

April 15, 2021

TO: NBEDC Board

FROM: Jeff Jewell, Economic and Community Development Director

RE: Agenda Item #7: Presentation and discussion of a proposed project expenditure for final design of a portion of the Dry Comal Creek Hike and Bike Trail

Background:

On January 11, 2021, the City Council adopted the first update to the Hike/Bike Trail Plan since 2010. The plan identifies on and off-street trail connections to neighborhoods, parks, schools and commerce throughout the City and ETJ. Given the City's significant growth since 2010, the City needed to re-evaluate its completed trail inventory, adopt standards for trails, identify new and expanded opportunities to implement the trail vision, and incorporate newly adopted planning studies. The plan provides staff, elected and appointed officials, the development community and citizens a more accurate picture of current trails and future corridor planning and implementation efforts.

The Dry Comal Creek Greenway is envisioned as a linear trail park that will connect neighborhoods with local destinations, existing and future trails and provide recreational opportunities for residents and visitors. The trail will be approximately 0.75 miles in length between North Walnut Avenue and Landa Street, and approximately .35 miles between Landa Street and Elizabeth Avenue. This section is one part of a larger part of the Dry Comal Creek Greenway that could eventually connect to the Little League ballfields and Loop 337.

The city completed preliminary design for the project in 2018. The proposed project expenditure would fund the project's final design to include civil, survey, environmental, wayfinding, materials testing and landscape architecture. The City placed this project as its top priority for transportation alternatives funding to the MPO, which is a special funding allocation for bike and pedestrian improvements. Projects will be selected for MPO funding in August 2021. If awarded, the City would be responsible for 20% of the construction match (MPO paying for 80% of construction costs), which is currently estimated at \$500,000. The total project, including design and construction, is estimated at \$2,850,000.

The completion of the Dry Comal Creek Trail was ranked 6th out of 16 EDC strategic priorities and this expenditure would mark the first section of the trail's construction

TEL 830.221.4000

550 LANDA ST.

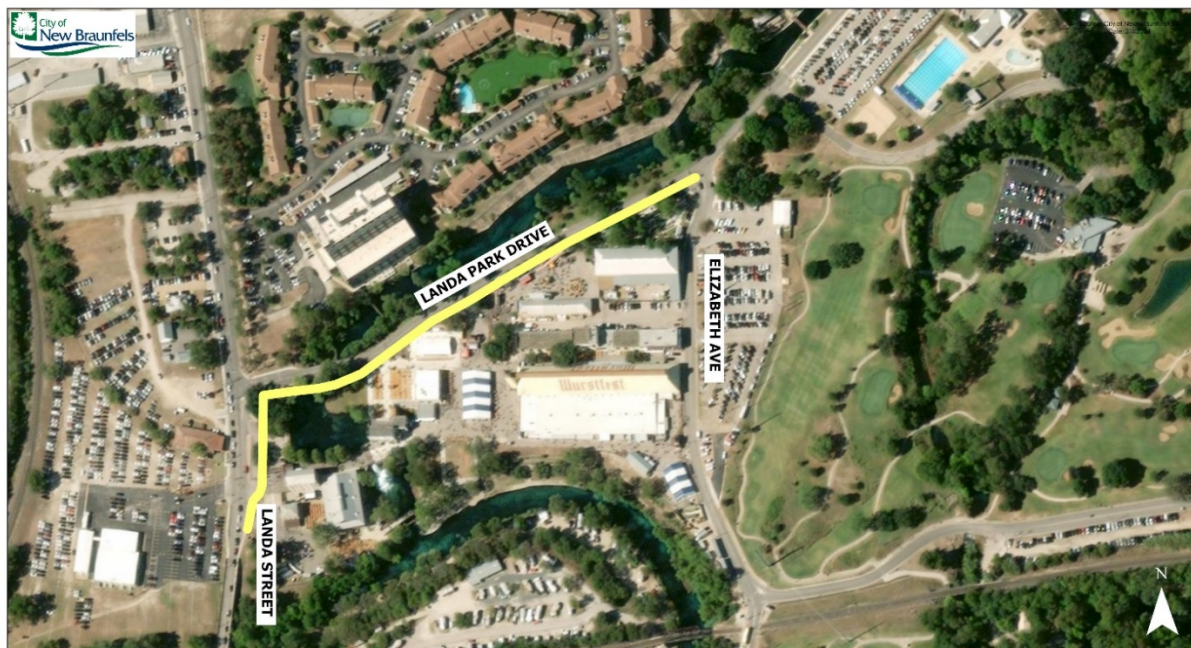
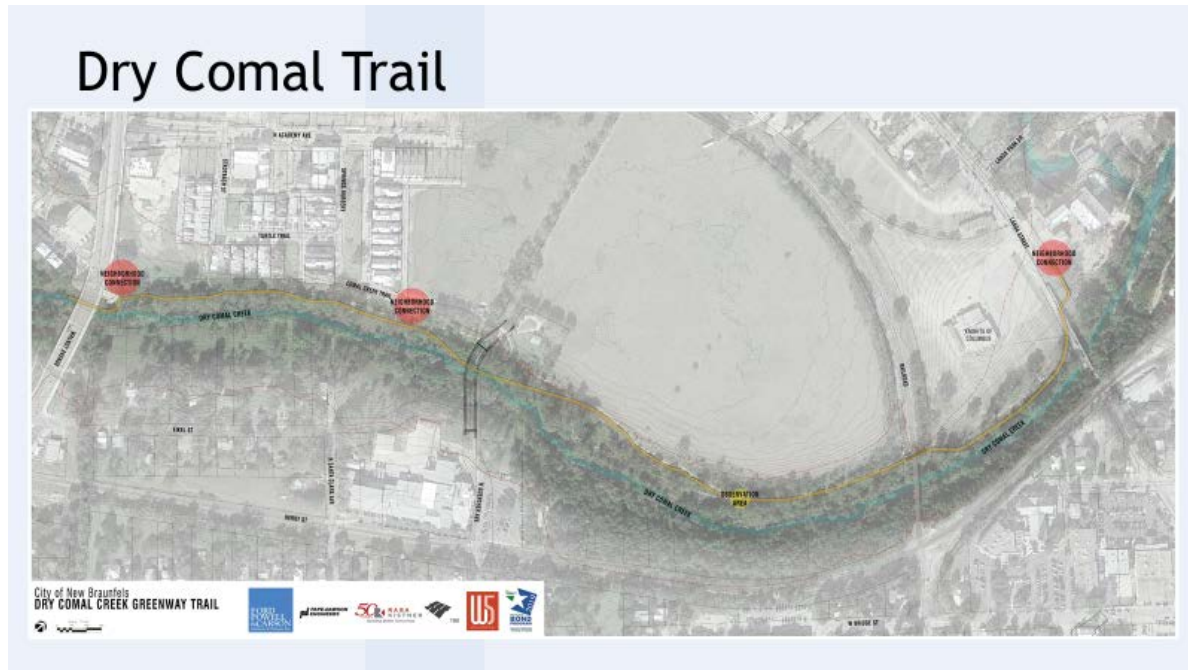
Fiscal Impact: FAX 830.608.2109
www.nbtexas.org

NEW BRAUNFELS, TEXAS 78130

Attachments:

Professional Services Agreement with Bain Medina Bain

General Site Project Site Plan



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of New Orleans. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of New Orleans, its officials or employees for any discrepancies, errors, or omissions which may exist.

March 25, 2021

Nathan Garza
Capital Projects Manager
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

Re: Dry Comal Creek Hike and Bike Trail
BMB Job No: P-3802

Dear Mr. Garza:

Bain Medina Bain, Inc. (BMB) is pleased to submit this proposal to provide Professional Engineering Services for the above referenced project. The project will consist of new multi-use trails along Dry Comal Creek connecting Walnut Avenue to Elizabeth Street. The trail will include wayfinding and other amenities. BMB's scope of services for this proposal will be provided as outlined below and on the attached work plan.

SCOPE OF SERVICES

Proposed Scope of Work will follow the City of New Braunfels (CONB) Design Criteria and outlined in the attached appendix work plan.

COMPENSATION

BMB's proposed fee for the scope of services described is based on a not to exceed fee. The following is a breakdown of the total fee:

50% Design Phase	\$123,000.00
90% Design Phase	\$ 83,000.00
100% Design Phase	\$ 26,000.00
Bidding & Permitting Phase	\$ 17,000.00
Construction Phase	\$ 39,000.00
Project Close-Out	\$ 3,000.00
BASE FEE TOTAL=	\$291,000.00

ADDITIONAL SERVICES SUBTOTAL= \$ 49,960.00

GRAND TOTAL= \$340,960.00

Attached is a breakdown by task, man hours and dollars for each task.

SCHEDULE

BMB anticipates the following project schedule can begin immediately after receiving Notice to Proceed and each successive phase beginning after receiving acceptance to the previous phase.

50% Design Phase	90 days
90% Design Phase	75 days
100% Design Phase	45 days
Bid Phase	30 days
Construction Phase	360 days
Project Close-Out	30 days

Mr. Nathan Garza

March 25, 2021

Page 2 of 2

Re: Dry Comal Creek Hike and Bike Trail
BMB Job No: P-3802

Services performed will be in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession currently practicing under similar conditions. No other warranty, expressed or implied, is made.

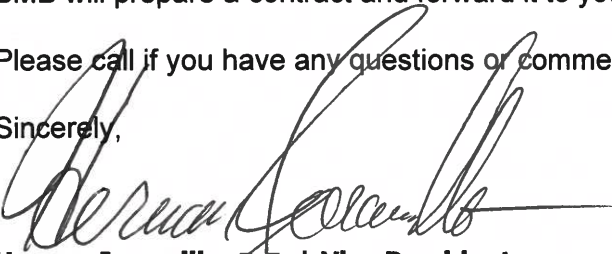
This proposal does not include platting, detention pond design, trailhead design, water fountain design, lighting design, parking lot design, bathrooms, street signage, irrigation, and MEP services.

ANY FEES REQUIRED BY THE APPROVAL AGENCIES ASSOCIATED WITH THE PERMITTING PROCESS SHALL BE THE RESPONSIBILITY OF THE OWNER.

If this proposal satisfactorily sets forth your understanding of the arrangement between us, BMB will prepare a contract and forward it to you.

Please call if you have any questions or comments.

Sincerely,



Hernan Jaramillo, P.E. | Vice President
Bain Medina Bain, Inc.
Engineers & Surveyors
HUB, SBE, WBE, TxDOT Pre-Certified Firm
hjaramillo@bmbi.com

Attachments: Fee Summary and Timeline for Design Phase Services
BMB Project Work Plan and Fee Proposal Breakdown
Subconsultant Proposals

City of New Braunfels

FEE SUMMARY AND TIMELINE FOR PROFESSIONAL SERVICES

Project: Dry Comal Creek Hike and Bike Trail
 Prime Consultant: BAIN MEDINA BAIN, INC.
 Subconsultant: 3. Raba Kistner (Testing), 4. Raba Kistner (Environmental), 5. TBG (Landscape Architect), 6. TBG (Wayfinding)
 Proposal Date:
 Prepared By: Hernan Jaramillo, P.E. (Bain Medina Bain, Inc.)

ACTIVITY	TIMELINE (CALENDAR DAYS)	FEE
50% Design Phase	90	\$123,000.00
1. Bain Medina Bain, Inc. (Civil)		\$34,560.50
2. Bain Medina Bain, Inc. (Survey)		\$36,280.00
3. Raba Kistner (Testing)		\$6,941.50
4. Raba Kistner (Environmental)		\$23,718.00
5. TBG (Landscape Architect)		\$14,000.00
6. TBG (Wayfinding)		\$7,500.00
90% Design Phase	75	\$83,000.00
1. Bain Medina Bain, Inc. (Civil)		\$24,440.00
2. Bain Medina Bain, Inc. (Survey)		\$7,850.00
3. Bain Medina Bain, Inc. (Easements)		\$18,210.00
4. Raba Kistner (Testing)		\$0.00
5. Raba Kistner (Environmental)		\$0.00
6. TBG (Landscape Architect)		\$17,000.00
7. TBG (Public Meeting)		\$6,000.00
8. TBG (Wayfinding & Public Meeting)		\$9,500.00
100% Design Phase	45	\$26,000.00
1. Bain Medina Bain, Inc. (Civil)		\$15,500.00
2. Bain Medina Bain, Inc. (Survey)		\$0.00
3. Raba Kistner (Testing)		\$0.00
4. Raba Kistner (Environmental)		\$0.00
5. TBG (Landscape Architect)		\$8,000.00
6. TBG (Wayfinding)		\$2,500.00
Bidding and Permitting Phase	30	\$17,000.00
1. Bain Medina Bain, Inc. (Civil)		\$10,000.00
2. Bain Medina Bain, Inc. (Survey)		\$0.00
3. Raba Kistner (Testing)		\$0.00
4. Raba Kistner (Environmental)		\$0.00
5. TBG (Landscape Architect)		\$6,500.00
6. TBG (Wayfinding)		\$500.00
Construction Phase	360	\$39,000.00
1. Bain Medina Bain, Inc. (Civil)		\$21,150.00
2. Bain Medina Bain, Inc. (Survey)		\$7,850.00
3. Raba Kistner (Testing)		\$0.00
4. Raba Kistner (Environmental)		\$0.00
5. TBG (Landscape Architect)		\$8,000.00
6. TBG (Wayfinding)		\$2,000.00
Project Closeout	30	\$3,000.00
1. Bain Medina Bain, Inc. (Civil)		\$3,000.00
2. Bain Medina Bain, Inc. (Survey)		\$0.00
3. Raba Kistner (Testing)		\$0.00
4. Raba Kistner (Environmental)		\$0.00
5. TBG (Landscape Architect)		\$0.00
PROJECT TOTALS		
1. Bain Medina Bain, Inc. (Civil)		\$108,650.50
2. Bain Medina Bain, Inc. (Survey)		\$51,980.00
3. Bain Medina Bain, Inc. (Easements)		\$18,210.00
4. Raba Kistner (Testing)		\$6,941.50
5. Raba Kistner (Environmental)		\$23,718.00
6. TBG (Landscape Architect)		\$59,500.00
7. TBG (Wayfinding)		\$22,000.00
BASE FEE TOTAL	630	\$291,000.00
Additional Services and Allowances		
1. WPAP (BMB) (If Needed)		\$15,000.00
2. TCEQ Fees & Coordination (BMB) (If Needed)		\$11,000.00
3. Geological Assessment (Raba Kistner) (If Needed)		\$3,750.00
4. TDLR Fees & Coordination		\$2,000.00
5. Additional Easements-3(BMB) (If Needed)		\$18,210.00
ADDITIONAL SERVICES TOTAL		\$49,960.00
GRAND TOTAL		\$340,960.00

Design Criteria
PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN

Project: Dry Comal Creek Hike and Bike Trail
Prime Consultant: BAIN MEDINA BAIN, INC.
Subconsultant: 3) Raba Kistner (Testing), 4) Raba Kistner (Environmental) 5) TBG
Proposal Date: 3/24/2021
Prepared By: Hernan Jaramillo, P.E. (Bain Medina Bain, Inc.)

Insert Positions As Required ----->
Insert Approved Hourly Rate for Each Position ----->

TASK CODE AND DESCRIPTION		RESPONSIBILITY	Principal		Sr. Project Manager		Sr. Project Engineer		Project Engineer		EIT I		EIT II		CADD Tech I/ Eng. Tech I		CADD Tech II/ Eng. Tech II		Clerical/ Admin		TASK HOURS	TASK / PHASE FEE
			Principal	\$250.00	Manager	\$200.00	Engineer	\$180.00	Engineer	\$150.00		\$105.00		\$120.00		\$100.00		\$105.00		\$85.00		
50% Design			0		20		0		88		0		101		0		42		7.5		258.5	\$123,000.00
01. Project Management and General Items			BMB																			\$3,817.50
01.010. DSR Preparation / Scoping Meeting/ Site Visit					6			6													12	\$2,100.00
01.020. Design Review Meeting					2			2													4	\$700.00
01.030. Project Schedule (Includes Construction)					1			1													2	\$350.00
01.040. Preparation of Submittal								2				2							2		6	\$667.50
02. Topographic Surveying / Base Mapping			BMB																			\$36,280.00
02.010. See Attached Survey LOE																						\$36,280.00
03. Trail Design			BMB																			\$15,820.00
03.010. Quantities					2			8				12				8		2			32	\$4,050.00
03.020. Typical Sections (Existing and Proposed)								6				8				4					18	\$2,280.00
03.030. Site Layout Demolition								4				8				4					16	\$1,980.00
03.040. Plan and Profile Sheets					2			12				20				8					42	\$5,440.00
03.050. Details								6				8				2					16	\$2,070.00
04. Drainage Design			BMB																			\$10,980.00
04.010. Establish Drainage Discharge			BMB																			
04.010.010. Drainage Area Map								6				8				8					22	\$2,700.00
04.010.020. Model Hydrology (Pre-Project and Post-Project)								8				8									16	\$2,160.00
04.010.030. Calculate Design Discharges								6				8									14	\$1,860.00
04.020. Design Storm Drain Facilities (Plan and Profile)			BMB																			\$0.00
04.020.010. Trail Culvert Layouts								8				8				4					20	\$2,580.00
04.020.020. SWMP/Drainage Report								2				8				4					14	\$1,680.00
05. Traffic Control Plan																						\$470.00
05.010. Traffic Control details					1			1				1									3	\$470.00
06. Environmental and Regulatory Coordination																						\$700.00
06.010. General Environmental Coordination					2			2													4	\$700.00
07. Cost Estimating																						\$1,710.00
07.010. Prepare Cost Estimate					2			6				2							2		12	\$1,710.00
08. Communications																						\$870.00
08.010. Assist in Public and HOA Meetings (1)					2			2											2		6	\$870.00
Printing & Miscellaneous																						\$193.00
BMB Subtotal																						\$70,647.50
09. Subconsultant Participation																						\$52,159.50
Environmental			Raba Kistner																			\$23,718.00
Testing			Raba Kistner																			\$6,941.50
Landscape Plan & Tree Mitigations			TBG																			\$14,000.00
Wayfinding			TBG																			\$7,500.00
90% Design				0	27	0	52	0	61	0	28	9	177									\$83,000.00

Prime	Bain Medina Bain, Inc.
Sub 1	Environmental Raba Kistner
Sub 2	Testing Raba Kistner
Sub 3	Landscape, Wayfinding TBG
ALL	ALL

Design Criteria
PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN

Project:
Prime Consultant:
Subconsultant:
Proposal Date:
Prepared By:

Dry Comal Creek Hike and Bike Trail
BAIN MEDINA BAIN, INC.
3) Raba Kistner (Testing), 4) Raba Kistner (Environmental) 5) TBG
3/24/2021
Hernan Jaramillo, P.E. (Bain Medina Bain, Inc.)

TASK CODE AND DESCRIPTION		RESPONSIBILITY	Insert Positions As Required -----> Insert Approved Hourly Rate for Each Position ----->															TASK HOURS	TASK / PHASE FEE																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
			Principal	Sr. Project Manager	Sr. Project Engineer	Project Engineer	ETT I	ETT II	CADD Tech I/ Eng. Tech I	CADD Tech II/ Eng. Tech II	Clerical/ Admin																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
			\$250.00	\$200.00	\$180.00	\$150.00	\$105.00	\$120.00	\$100.00	\$105.00	\$85.00																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
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Prime	Bain Medina Bain, Inc.
Sub 1	Environmental Raba Kistner
Sub 2	Testing Raba Kistner
Sub 3	Landscape, Wayfinding TBG
ALL	ALL

Design Criteria
PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN
Project: Dry Comal Creek Hike and Bike Trail
Prime Consultant: BAIN MEDINA BAIN, INC.
Subconsultant: 3) Raba Kistner (Testing), 4) Raba Kistner (Environmental) 5) TBG
Proposal Date: 3/24/2021
Prepared By: Hernan Jaramillo, P.E. (Bain Medina Bain, Inc.)

Insert Positions As Required ----->													
Insert Approved Hourly Rate for Each Position ----->													
TASK CODE AND DESCRIPTION		RESPONSIBILITY	Insert Approved Hourly Rate for Each Position ----->									TASK HOURS	TASK / PHASE FEE
			Principal \$250.00	Sr. Project Manager \$200.00	Sr. Project Engineer \$180.00	Project Engineer \$150.00	EIT I \$105.00	EIT II \$120.00	CADD Tech I/ Eng. Tech I \$100.00	CADD Tech II/ Eng. Tech II \$105.00	Clerical/ Admin \$85.00		
100% Design			0	14	0	34	0	34	0	27	5	114	\$26,000.00
01. Project Management and General Items			BMB										\$2,375.00
01.010. DSR Preparation / Scoping Meeting / Site Visit				4		4						8	\$1,400.00
01.020. Design Review Meeting				1		1						2	\$350.00
01.030. Project Schedule (Includes Construction)						1		1				2	\$270.00
01.040. Preparation of Submittal						1		1			1	3	\$355.00
02. Trail Design			BMB										\$5,105.00
02.010. Quantities						1		2		2		5	\$600.00
02.020. Typical Sections (Existing and Proposed)						2		2		8		12	\$1,380.00
02.030. Site Layout Demolition						1		1		1		3	\$375.00
02.040. Plan and Profile Sheets				1		4		6		6		17	\$2,150.00
02.050. Details						1		2		2		5	\$600.00
03. Drainage Design			BMB										\$4,820.00
03.010. Establish Drainage Discharge													
03.010.010. Drainage Area Map						2		2				4	\$540.00
03.010.020. Model Hydrology (Pre-Project and Post-Project)						2		4				6	\$780.00
03.010.030. Calculate Design Discharges				1		2		4				7	\$980.00
03.020. Design Storm Drain Facilities (Plan and Profile)													\$0.00
03.020.010. Trail Culvert Layouts				1		2		4		4		11	\$1,400.00
03.020.020. SWMP/Drainage Report				1		2		2		2	2	9	\$1,120.00
04. Traffic Control Plan													\$270.00
04.010. Traffic Control details						1		1				2	\$270.00
05. Environmental and Regulatory Coordination													\$350.00
05.010. General Environmental Coordination				1		1						2	\$350.00
06. Cost Estimating													\$750.00
06.010. Prepare Cost Estimate						2		2		2		6	\$750.00
07. Communications													\$1,570.00
07.010. Assist in Public and HOA Meetings (1)				4		4					2	10	\$1,570.00
Printing & Miscellaneous													\$260.00
BMB Subtotal													\$15,240.00
08. Subconsultant Participation													\$10,500.00
Landscape Plan & Tree Mitigations			TBG										\$8,000.00
Wayfinding			TBG										\$2,500.00
Bidding & Permitting Phase				0	9	0	46	8	0	0	4	67	\$17,000.00
01. Bid Phase			BMB										\$9,880.00
01.010. Submit 100% Plans						8		2			2	12	\$1,580.00
01.020. Final Project Specifications Book				1		4		2			2	9	\$1,180.00
01.030. Finalize Constructability Issues						8						8	\$1,200.00

Prime	Bain Medina Bain, Inc.
Sub 1	Environmental/Raba Kistner
Sub 2	Testing/Raba Kistner
Sub 3	Landscape, Wayfinding/TBG
ALL	ALL

Design Criteria
PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN
Project: Dry Comal Creek Hike and Bike Trail
Prime Consultant: BAIN MEDINA BAIN, INC.
Subconsultant: 3) Raba Kistner (Testing), 4) Raba Kistner (Environmental) 5) TBG
Proposal Date: 3/24/2021
Prepared By: Hernan Jaramillo, P.E. (Bain Medina Bain, Inc.)

Insert Positions As Required ----->
Insert Approved Hourly Rate for Each Position ----->

Insert Positions As Required Insert Approved Hourly Rate for Each Position																					
TASK CODE AND DESCRIPTION	RESPONSIBILITY	Principal		Sr. Project Manager		Sr. Project Engineer		Project Engineer		EIT I		EIT II		CADD Tech I/ Eng. Tech I		CADD Tech II/ Eng. Tech II		Clerical/ Admin		TASK HOURS	TASK / PHASE FEE
		Principal	Principal	Sr. Project Manager	Sr. Project Manager	Sr. Project Engineer	Sr. Project Engineer	Project Engineer	Project Engineer	EIT I	EIT I	EIT II	EIT II	CADD Tech I/ Eng. Tech I	CADD Tech I/ Eng. Tech I	CADD Tech II/ Eng. Tech II	CADD Tech II/ Eng. Tech II	Clerical/ Admin	Clerical/ Admin		
01.040. Attend 100% Review Meeting				4				4												8	\$1,400.00
01.050. Assist the City in Preparing Advertising Documents								4												4	\$600.00
01.060. Distribute Plans and Specifications to Contractors and Plan Rooms								2												2	\$300.00
01.070. Attend Pre-Bid Meeting				4				4												8	\$1,400.00
01.080. Respond to Contractor Questions								4												4	\$600.00
01.090. Prepare and Distribute Necessary Addenda								4		2										6	\$810.00
01.100. Prepare Bid Tabulation and Letter of Recommendation								4		2										6	\$810.00
Printing & Miscellaneous																					
BMB Subtotal																					\$120.00
02. Subconsultant Participation																					\$9,880.00
Landscape Plan & Tree Mitigations	TBG																				\$7,000.00
Wayfinding	TBG																				\$6,500.00
Construction Phase			0	24	0	82	0	26	0	0	10	142	\$39,000.00								
01. Construction Management	ALL												\$21,070.00								
01.010. Attend Pre-construction conference				4		4						8	\$1,400.00								
01.020. Reestablish Project Control Points for Contractor Prior to Construction												0	\$0.00								
01.030. Review Contractor Pay Estimates (12 months)				2		6		2			2	12	\$1,710.00								
01.040. Review / Negotiate Change Orders				2		4		2				8	\$1,240.00								
01.050. Review Submittals				2		12		4			4	18	\$2,680.00								
01.060. Respond to RFIs				2		8		4			2	16	\$2,250.00								
01.070. Project Site Visits and Monthly Reports (Minimum One Per Month) (24 total)				2		24					2	28	\$4,170.00								
01.080. Participate in Construction Progress Meetings and Prepare Meeting Minutes (12 meetings)				2		12		8				22	\$3,160.00								
01.090. Final Walkthrough and Punchlist Review				2		6		4			2	14	\$1,950.00								
01.100. TDLR Inspection				6		6		2			2	16	\$2,510.00								
02. Layout of Proposed Alignment	BMB												\$7,850.00								
02.010. See Attached Survey LOE													\$7,850.00								
Printing & Miscellaneous																					
BMB Subtotal													\$80.00								
02. Subconsultant Participation													\$28,920.00								
Landscape Plan & Tree Mitigations	TBG												\$10,000.00								
Wayfinding	TBG												\$8,000.00								
Project Closeout		0	0	0	8	0	10	0	4	1	23	\$3,000.00									
01. Project Closeout	BMB												\$2,905.00								
01.010. Prepare Record Drawings					4		6		4	1	15	\$1,825.00									
01.020. Final Warranty Inspection					4		4				8	\$1,080.00									
Printing & Miscellaneous													\$95.00								
BMB Subtotal													\$2,905.00								
TOTAL BASE FEE WITH HOUR BREAKDOWN		0	94	0	310	8	232	0	101	36.5	781.5	\$291,000.00									

Prime	Bain Medina Bain, Inc.
Sub 1	Environmental/Raba Kistner
Sub 2	Testing Raba Kistner
Sub 3	Landscape, Wayfinding TBG
ALL	ALL

City of New Braunfels

Design Criteria
PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN

Project:
Prime Consultant:
Subconsultant:
Proposal Date:
Prepared By:

Dry Comal Creek Hike and Bike Trail
BAIN MEDINA BAIN, INC.
3) Raba Kistner (Testing), 4) Raba Kistner (Environmental) 5) TBG
3/24/2021
Hernan Jaramillo, P.E. (Bain Medina Bain, Inc.)

Insert Positions As Required
Insert Approved Hourly Rate for Each Position

TASK CODE AND DESCRIPTION	RESPONSIBILITY	Principal	Sr. Project Manager	Sr. Project Engineer	Project Engineer	EIT I	EIT II	CADD Tech I/ Eng. Tech I	CADD Tech II/ Eng. Tech II	Clerical/ Admin	TASK HOURS	TASK / PHASE FEE
		\$250.00	\$200.00	\$180.00	\$150.00	\$105.00	\$120.00	\$100.00	\$105.00	\$85.00		
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS		
Additional Services												
01. Subconsultant Participation		0	0	0	0	0	0					\$49,960.00
WPAP (If Needed)	BMB											\$49,960.00
TCEQ Fees & Coordination (If Needed)	BMB											\$15,000.00
Geological Assessment (If Needed)	Raba Kistner											\$11,000.00
TDLR Fees & Coordination	Accessibility Unlimited											\$3,750.00
Additional Easements 3 (If Needed)	BMB											\$2,000.00
TOTAL FEE WITH ADDITIONAL SERVICES		0	94	0	310	8	232	0	101	36.5	781.5	\$340,960.00

Prime	Bain Medina Bain, Inc.
Sub 1	Environmental Testing Raba Kistner
Sub 2	Testing Raba Kistner
Sub 3	Landscape, Wayfinding TBG
	ALL



Dry Comal Hike and Bike Trail (New Braunfels, Texas) – Fee Estimate
BMBI Project P -3802

TASKS	SURVEY RPLS	SURVEY TECHNICIAN	CADD TECHNICIAN	THREE MAN SURVEY CREW	Cost by Task
	\$150.00	\$115.00	\$105.00	\$205.00	

Topographic and Tree Survey (approx. 5,600 linear feet)					
Contact Texas811 for utility locates		4.0			\$460.00
Field Survey - Locate and verify existing horizontal and vertical control points, and/or establish new survey control along proposed trail path, and run level loops	6.0	6.0		24.0	\$6,510.00
Field Survey - Locate improvements, significant grade breaks, utilities, 6-inch and larger trees, and take 50-foot interval cross-sections along the proposed 60-foot wide path	6.0	12.0		72.0	\$17,040.00
Post-Processing		8.0			\$920.00
Prepare topographic and tree survey plat	8.0	8.0	64.0		\$8,840.00
Prepare Control Sheets	4.0	2.0	16.0		\$2,510.00
Hours by Employee Classification	24.0	40.0	80.0	96.0	
Cost by Employee Classification	\$3,600.00	\$4,600.00	\$8,400.00	\$19,680.00	
*Total					\$36,280.00

*Trees located outside of original 60-foot wide trail path will be surveyed for an additional fee based on the hourly rates shown above.

Dry Comal Hike & Bike Trail Easements					
Research Property Ownership	1.0	5.0			\$725.00
Field Survey - Locate Boundary		1.0		8.0	\$1,755.00
Post-Processing and Boundary Analysis	1.0	1.0			\$265.00
Field Survey - Set Easement Corners		1.0		4.0	\$935.00
Prepare Easement Exhibit and Metes & Bounds Description	2.0	2.0	10.0		\$1,580.00
Review and Address Comments and Revise Easement Exhibit and Metes & Bounds Description	2.0		1.0		\$405.00
Finalize Easement Exhibit and Metes & Bounds Description	2.0		1.0		\$405.00
Hours by Employee Classification	8.0	10.0	12.0	12.0	
Cost by Employee Classification	\$1,200.00	\$1,150.00	\$1,260.00	\$2,460.00	
**Total (per easement)					\$6,070.00

**Easement changes due to alignment revisions will be provided for an additional fee based on the hourly rates shown above.

Layout of proposed alignment (2 stakings)					
Calculate points along proposed alignment (approx. 5,600 linear feet) at all PC's, PT'S, and at 50-foot interval stations	2.0	8.0			\$1,220.00
Field Survey - Set offset hubs along proposed alignment at all PC's, PT'S, and at 50-foot interval stations (points set at PC's and PT'S will supercede the 50-foot interval station). Offset hubs will be staked twice .	4.0	8.0		48.0	\$11,360.00
Post-Processing and verify location of points set	4.0	8.0			\$1,520.00
Prepare staking sheet (point plot) of the alignment points set	2.0		24.0		\$2,820.00
Hours by Employee Classification	12.0	24.0	24.0	48.0	
Cost by Employee Classification	\$1,800.00	\$240.00	\$288.00	\$576.00	
***Total					\$15,700.00

***Any stakes disturbed or destroyed during construction will be replaced for an additional fee based on the hourly rates shown above.

03/11/2021



TBG

Mr. Hernan Jaramillo
Bain Medina Bain, Inc.
7073 San Pedro Ave
San Antonio, TX 78216

Proposal for Professional Design Services

Client: City of New Braunfels
Project Name: Dry Comal Creek Greenway
Project Location: New Braunfels, TX
TBG Project Number: 21093

Dear Mr. Jaramillo,

The Broussard Group, Inc. dba TBG Partners (TBG) is pleased to submit this Proposal for Professional Design Services (the Proposal) for the above referenced Project.

TBG will work in collaboration with your team of professional consultants (the Design Team) to achieve your overall Project goals. Once executed, the Proposal with attached Terms and Conditions, incorporated herein by reference, will serve as the parties' agreement for TBG's Scope of Services for the Project (the Agreement).

We look forward to the opportunity to work with you. Please do not hesitate to call if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine Kearney". The signature is fluid and cursive, with a large, sweeping "E" and "K".

Elaine Kearney PLA
Managing Principal

TBG
430 austin street
suite 100
san antonio, tx 78215

[210] 366 9933
tbgpartners.com

The Project

The Dry Comal Creek Greenway is envisioned as a linear trail park that will connect neighborhoods with local destinations, existing and future trails and provide recreational opportunities for residents and visitors. The trail will be approximately 0.75 miles in length between North Walnut Avenue and Landa Street, and approximately .35 miles between Landa Street and Elizabeth Avenue. Our approach will include a collaborative approach with the City of New Braunfels and the rest of the design team to achieve the goals of this project.

TBG will prepare and develop the site design and implementation documents to include the following:

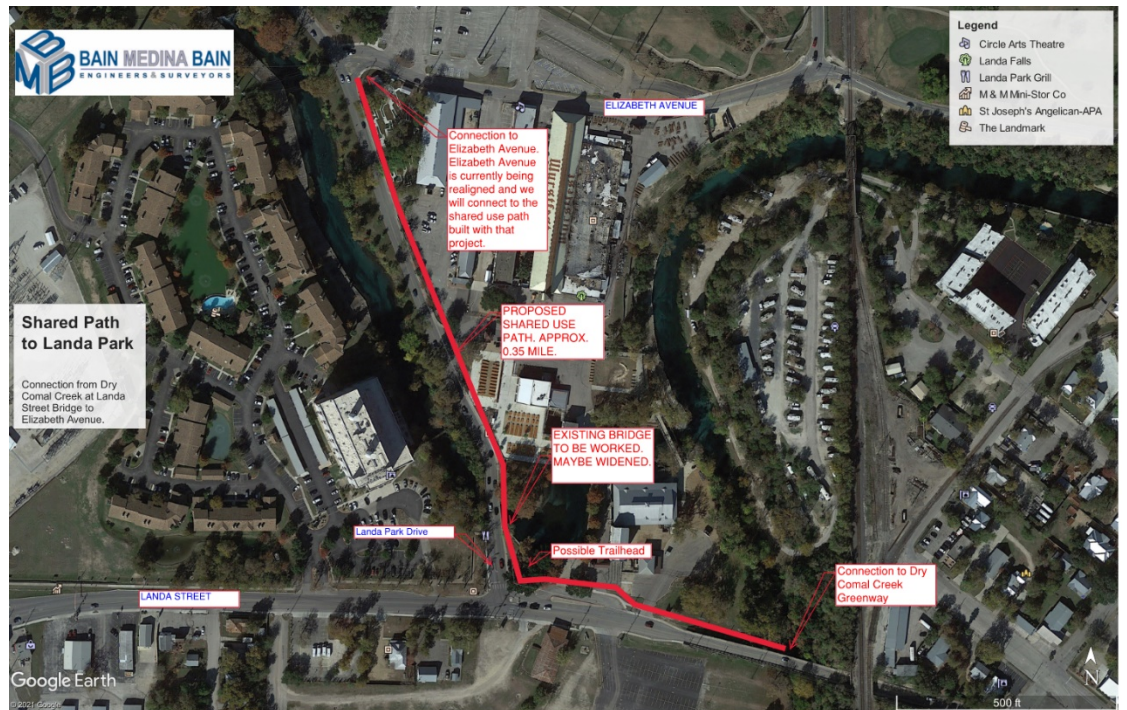
- 01_ Conceptual input on trail alignment, material selection and finishes, retaining walls, and site grading/ADA accessibility. However, documentation of these elements is assumed to be by Bain Medina Bain.
- 02_ Development of a plant palette, details and layout plans for Trees, shrubs, perennials and grass; Specifications for topsoil, edgers, etc. At this time, it is understood that permanent irrigation will not be part of the project.
- 03_ Permitting documents as may be required to fulfill tree protection and/or landscape ordinances. Coordination with Bain Medina Bain on documentation of tree demolition plans.
- 04_ Selection, documentation and placement of site furnishings (benches, trash cans, bike racks, bollards, etc.)
- 05_ (Optional) Trail wayfinding to include development of a Dry Comal Trail identity system with signage, markers, and distance markers.

Reference Exhibits 'A' and 'B' below for our understanding of the current program and site which serves as the basis for this Proposal. In the event that the Project scope changes significantly from the exhibits, TBG reserves the right to revise the Scope of Services and associated fee allocations to align with the scope modifications.

Exhibit 'A' – Walnut to Landa Street



Exhibit 'B' –Landa Street to Elizabeth Ave



Plan(s) shown above represents our best understanding of the scope and extent of the Project at the time of preparing this Proposal. Substantive changes may require consideration of Additional Services.

Scope of Services

TBG will provide this Scope of Services based on the Proposal Assumptions that follow. Additional Services may be available, per the terms described later in the Agreement.

TBG's design process divides the Scope of Services into three distinct phases: Discovery, Development, and Delivery. By adhering to these three phases in our design process, projects move seamlessly from an idea to implementation.

Discovery – Completed under a separate contract

To research, analyze and understand the site context as well as programmatic opportunities and constraints. Critical tasks within Discovery include:

- Site Inventory and Analysis
- Program Assessment and Analysis

Development -

To develop the Project vision and craft its form and function, from design through documentation, including these ongoing tasks:

- Task One: 50% Design
- Task Two: Public Meeting
- Task Three: 90% Design
- Task Four: 100% Design
- Task Five: Permitting

Delivery

To consult in the implementation of the Project's vision through the construction phase, ensuring compliance with the intent of the overall design and its accompanying story.

Tasks include:

- Task Six: Bidding and Negotiation Assistance
- Task Seven: Construction Observation

Development

Task One

50% Design

Description of Services

TBG will work with the Client and consultant team to further develop the design concepts for the Project. This task will serve to finalize the trail layout and selection of materials for the Project.

Deliverables

- Permitting/Code Review
- Preliminary plant palette; Tree placement; Conceptual layout of shrub beds and extent of revegetation of disturbed areas.
- Selection of site furnishings and preliminary placement along the trail.
- (Optional) Preliminary wayfinding strategy, including development of marker types and locations on plan.
- Image compilation and presentation of recommended materials selections.
- We have assumed two (2) meetings in San Antonio or New Braunfels during this task.

Task Two

Public Meeting

Description of Services

TBG will assist Bain Medina Bain in preparing materials for (1) public meeting. This will include information on the approach to planting and specific plant palette. TBG will develop a 3D model of up to (2) key locations along the trail. From this model, TBG will develop illustrative renderings to illustrate the proposed trail to the public.

Deliverables

- Image boards to communicate planting design.
- Two perspective renderings which depict the character, look and feel for each selected trail view, including design themes, materials, finishes and uses/activities.
- (Optional) Image boards to communicate proposed wayfinding strategy and elements.
- *Note: Additional views of a previously modeled area can be added for no additional cost. Additional trail areas can be modeled for a price of \$3,000ea (includes development of 3D views).*

Task Three

70% Design

TBG will work with the Client and consultant team to further develop the design concepts for the Project. This task will serve to finalize selection and location of trail amenities and associated details for the Project.

Deliverables

- Final plant palette; Tree placement; Draft layout of individual shrubs; extent of revegetation of disturbed areas.
- Indication of site furnishings along the trail.
- (Optional) Detailed layout and placement of wayfinding markers.
- Construction details to describe each element above.
- Draft Specifications for the elements above.
- We have assumed two (2) meetings in San Antonio or New Braunfels during this task.

Task Four**100% Design**

TBG will prepare construction drawings and specifications to properly describe the scope of the Project. These documents will be suitable for review and for competitive bidding purposes.

Deliverables

- Final planting plans.
- Final Indication of site furnishings and placement along the trail.
- (Optional) Final determination of wayfinding markers and their location along the trail.
- Construction details to describe each element above.
- Specifications for the elements above.
- We have assumed two (2) meetings in San Antonio or New Braunfels during this task.

Task Five**Permitting**

TBG will submit permit landscape plans to the City of New Braunfels any make necessary revisions in order to obtain a permit related to landscaping, tree protection and removal.

Deliverables

- Drawings suitable for submission for Sec 144-5.3 of the New Braunfels Development Code.
- A reasonable number of revisions in order to meet requirements. Substantive design revisions outside of TBG's purview may be grounds for an additional service request.
- We have assumed two (2) meetings in San Antonio or New Braunfels during this task.

Delivery

Task Six

Bidding and Negotiation Assistance

Description of Services

TBG will assist the Client and Design Team in reviewing bid tabulations and make recommendations regarding qualified subcontractors. TBG will provide the following services during this task:

- Respond to questions during the bidding and/or contract negotiations
- Assist in the interview/recommendation of subcontractors.

Deliverables

- Clarification of addenda and/or supplemental drawings as required
- Attendance at one (1) pre-bid meeting
- Meeting with the Client and Design Team to review and comment on bid tabulations and Contractor recommendations – maximum of two (2) meetings

Task Seven

Construction Observation

Description of Services

During preconstruction, TBG will review, mark-up and return submittals, shop drawings and RFI's related to landscape scope for the above-mentioned site/project elements.

During construction, TBG will visit the site during construction and be present for the Client's meetings as indicated below. We will observe the work of the Contractor to generally determine performance and quality of the construction as related to the intent of the construction documents and specifications. We will observe placement of soil, planting and site furnishings/wayfinding elements. TBG will assist in the determination of the Contractor's substantial completion and prepare a punch list initiating the contractor's maintenance and warranty obligation. Included within this scope will be:

Deliverables

- Review submittals and RFIs
- Attend nursery visits for tree/plant selection - maximum of one (1) visit
- Attend construction meetings and visit the site with the Design Team. We have allocated a maximum of six (6) construction meetings / site visits for landscape and two (2) for wayfinding, if included.
- Provide field reports based on site observations

Proposal Assumptions

TBG's Proposal assumes and is contingent upon the following:

- Client shall provide the following information or services as required for performance of the work. TBG assumes no responsibility for the accuracy of such information or services and will not be liable for errors or omissions therein or the effect of same on TBG's work. Should TBG be required to obtain or compile this information, such services will be charged as Additional Services.
 - _ Legal descriptions of property
 - _ Traffic Impact Analysis
 - _ Topography and boundary surveys
 - _ Existing engineering and utility base information
 - _ ACAD preparation of approved concept. Fees will be proposed upon Client's request.
- TBG understands that the Project will be delivered as one (1) construction document package. Client understands and agrees that division of documents into multiple phases or releases will result in compensation for additional services.
- TBG understands that this project will be developed and delivered within an AutoCAD format and platform.
- This proposal does not include fees for irrigation design, as none is anticipated at this time.
- TBG will coordinate with Client's other consultants in the design team, to the extent their scope of work relates to the landscape architectural design elements within the Project. No fees for these consultants have been included in Scope of Services. As schematic design and design development progress, we will make recommendations for additional sub-consultants, as needed, at an additional fee.
- The following engineering tasks are not included in our Scope of Services:
 - _ Civil engineering of roads, parking and site utilities
 - _ Structural engineering for [example: site walls, trellis structures, if any]
 - _ Structural and MEP engineering for on-structure loading requirements and deck drainage systems
 - _ Site lighting; MEP engineering for site lighting and electrical circuitry
 - _ Architectural, MEP and structural services for site buildings, if any
 - _ Aquatic, MEP, or structural services associated w/ swimming pools or water features.
- Rough grading and storm drainage systems will be designed and documented by Client's civil engineer, including utility rough ins, and site area drainage maps. TBG will coordinate with this consultant for its design requirements.
- Client's architect will lead and manage the building permits submittal and may include documentation or designs by TBG for the site and terrace amenity development.
- Client will provide surveys, record drawings, and geotechnical and other investigations that TBG may request to execute the work properly.

- Client will review and provide comments on drawings and outline criteria provided by TBG.
- Client or its separate consultant will provide accessibility permitting, submission, responses or work scope management. If required, TBG will respond to comments generated by the initial submittal to the Registered Accessibility Consultant (RAS).
- TBG will not perform work associated with major redesign value engineering tasks due to non-comprehensive or “plug” number CM @ Risk pricing resulting in budget overruns.
- TBG will not provide as-built documentation.
- TBG will not participate in zoning efforts.
- TBG may provide LEED documentation only as Additional Services.
- TBG shall not be required to sign any documents that would result in its having to certify, guaranty, or warrant the existence of conditions that it cannot independently ascertain.

Budget

A specific budget for landscape improvements has not been provided to TBG at this time. TBG will work with the client and design team to advise on a realistic budget associated with the desired improvements and work within reason to meet the client's budget expectations.

Should the budget be reduced or increased in excess of 15% between any major milestone submittal, TBG will be entitled to compensation for the Additional Services involved.

Schedule

Services described herein are contingent upon schedule requirements provided by the Client. Following are specific assumptions contained herein that are the basis for fees and services proposed. Any changes to the assumptions provided will require written acknowledgement and approval of the Client and TBG prior to proceeding. Should the Project schedule change or modify after contract authorization, the Project will be subject to Additional Services. Significant deviations, delays or pauses to the schedule may also be grounds for Additional Services.

Schedule Assumptions

Task	Description	Time	Units
Development			
Task One	50% Design	x	Weeks
Task Two	Public Meeting	x	Weeks
Task Three	90% Design	x	Weeks
Task Four	100% Design	x	Weeks
Task Five	Permitting		
Delivery			
Task Six	Bidding and Negotiation Assistance	x	Weeks
Task Seven	Construction Observation	x	Weeks
<hr/>			
Total TBG Time		x	Weeks

Fees for Professional Services

Each task has been written on a lump sum fee basis as noted below. The fees for this basic Scope of Services will be billed monthly:

Task	Description		Base Fee	Optional Wayfinding
Development				
Task One	50% Design	\$	14,000	7,500
Task Two	Public Meeting	\$	6,000	1,500
Task Three	90% Design	\$	17,000	8,000
Task Four	100% Design	\$	8,000	2,500
Task Five	Permitting	\$	4,000	n/a
Delivery				
Task Six	Bidding and Negotiation Assistance	\$	2,500	500
Task Seven	Construction Observation	\$	8,000	2,000

TBG Scope of Services Total Fees	\$	59,500	22,000
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Note: The Total TBG Scope of Services fee includes fees for landscape architectural and Environmental Graphic Design services only. This proposal excludes any and all state and local taxes associated with the project site. Any such taxes required by law will be added to the project fee.

Fees for Additional Services

Additional Services not covered by the Scope of Services outlined above, but requested in writing by the Client, will be billed on an hourly basis, unless otherwise agreed.

Fees for other sub-consultants, such as referenced in Proposal Assumptions, including architectural, structural, MEP or civil engineering, are not included in the Total TBG Scope of Services Fee.

TBG Hourly Rates

Level		Hourly Rate
Staff 1	\$	50-60
Staff 2	\$	65-85
Staff 3	\$	90-110
Staff 4	\$	115-140
Staff 5	\$	145-250

Reimbursables

The following costs shall be reimbursed at cost plus ten percent and are not included in the fee for professional services:

- Cost of copies for drawings, specifications, reports, cost estimates, xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract
- Cost of digital scanning
- Cost of printing for small and large format plots furnished or prepared in connection with the work of this contract
- Travel associated with the Project, including, but not limited to, mileage (current IRS rate), airfare, automobile rental, hotel and meals
- Cost of postage, shipping and delivery expenses other than first class mail
- Cost of models, special renderings, promotional photography, special process printing, document mounting, special equipment, special printed reports or publications, maps and documents approved in advance by the Client
- Photographic services and processing: drone aerial flights, drone insurance, videos and still photos
- Fees for additional consultants retained with the approval of the Client
- TAS Plan Review and Inspection Cost
- Cost for bid advertisement(s)
- PlanGrid charges

If the Proposal, fee of \$81,500 and the Terms and Conditions that follow, which are incorporated herein by reference, meet with your approval, please sign below and return a copy to TBG for our files. TBG must receive a signed copy of the Agreement in order to proceed with the Scope of Services.

APPROVED and agreed: The Broussard Group, Inc.



Elaine Kearney PLA
Managing Principal

03/11/2021

Date

APPROVED and agreed: Bain Medina Bain, Inc.

BY Authorized Agent

DATE

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, telephone [512] 305 9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249.a, and the Landscape Architects Registration Law, Article 249.c, Vernon's Texas Civil Statutes. Proposal copyright ©2021 by TBG Partners. No portion of this proposal may be copied or distributed without the written permission of TBG Partners.

Terms and Conditions

Effective Date

The Proposal for Professional Design Services (the Proposal) and these Terms and Conditions constitute the full and complete Agreement between the parties (the Agreement) and may be changed only by written agreement signed by both parties. The Agreement shall become effective upon its execution by Client. TBG is not obligated to proceed with the work until the Agreement is signed by Client. No prior oral or written representation regarding the Project and TBG's obligations will be of any force or effect unless said terms are also contained in the Agreement.

Parties to the Agreement

TBG is entering into this professional services agreement for the exclusive benefit of Client. There are no intended third-party beneficiaries of the Agreement. Both TBG and Client agree not to assign the Agreement or any causes of action that arise under it without the express written consent of the other party.

Standard of Care

TBG will exercise that degree of care and skill ordinarily practiced by landscape architects providing similar services for projects of similar scope in the location of the Project. In performing these services, TBG cannot ensure perfection and Client agrees TBG's services are performed without any warranties, either express or implied, as to the quality of its services or of its drawings. TBG is entitled to rely upon documents supplied to it by Client, Client's consultants and contractors, and information from public and other records, without the need for independent verification and without liability for same. TBG shall not be liable for changes, modifications and/or additions to regulatory requirements after the date of the Proposal or, respectively, after the date of any amendments thereto.

Scope and Responsibilities

The duties of TBG shall not be construed to exceed those services specifically set forth in the Proposal. When right of entry to the Project site is required for TBG to perform its services, Client agrees to obtain and accommodate TBG's legal right of entry on the site. Notwithstanding TBG's Scope of Services, TBG, its independent professional associates and/or consultants' do not have any obligation or right to supervise, direct, or have control over the contractor's work and shall not have authority over, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the contractor's failure to perform its work in accordance with the contract documents. TBG, its independent professional associates and/or consultants, shall not have authority over, or responsibility for, safety precautions and programs in connection with the contractor's work. TBG, its independent professional associates and/or consultants, shall not be required to sign any documents that would result in their having to certify, guaranty, or warrant the existence of conditions that they cannot independently ascertain.

TBG's Scope of Services does not include responsibility for detection, remediation, accidental release, reporting or any other service relating to naturally occurring or manmade site conditions, or to waste or hazardous materials, as defined by Federal, State, and local laws or regulations, and **CLIENT AGREES TO RELEASE, DEFEND,**

INDEMNIFY AND HOLD TBG HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM SAME.

Additional Services

Additional Services are services that may be needed by Client, but which are not included in the Scope of Services described in the Proposal. Additional Services will be provided only with prior approval of Client and agreement to compensate TBG for same, and include but are not limited to the following:

- Preparation and presentation of graphic exhibits other than those described in Scope of Services.
- Revisions and changes in drawings, specifications or other documents previously provided by Client, or the preparation of alternates or deductive change orders requested by Client.
- Preparation of record drawings or of measured drawings of existing conditions.
- Providing prolonged construction observation should the construction time be substantially extended through no fault of TBG.
- Providing services if, in Guaranteed Maximum Price (GMP) projects, the construction budget for TBG's scope items is reduced through no fault of TBG.
- Participation in any formal or informal dispute resolution process, litigation, or arbitration to which TBG is not a party, and only with TBG's consent, which may be withheld at TBG's sole discretion. Should a representative of TBG be subpoenaed to appear or produce documents by any party to such a dispute, Client agrees in advance to compensate TBG for its time and expenses incurred in compliance.

Guaranty of Certifications

Unless specifically provided for elsewhere in the Agreement, TBG makes no warranties, representations or guarantees that the Project will actually achieve or receive any certification by the Leadership in Energy and Environmental Design (LEED) Green Building Rating System of the U. S. Green Building Council, or any other similar state, local or national environmental building program. Similarly, unless otherwise provided for in the Agreement, TBG makes no warranties, representations or guarantees regarding the energy use or operating costs or expenses of the Project.

Instruments of Service

The drawings, specifications, computer files, electronic media, field data, notes and other documents prepared by TBG for the Project, including those prepared through or with its independent professional associates and/or consultants, are Instruments of Service for use solely with respect to this Project. TBG shall be deemed the author or creator of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. All Instruments of Service produced by TBG shall be released to Client as Adobe PDF files, and not in the native format available through programs including, but not limited to, InDesign, AutoCAD or other proprietary formats.

By entering into the Agreement, TBG grants to Client a limited, non-exclusive license to use the Instruments of Service provided to Client for purposes of constructing, using, and maintaining the Project, provided that Client substantially performs its obligations

under the Agreement, including prompt payment of all sums when due, under the Agreement. In the event of nonpayment by Client of any sums due for more than sixty (60) days, this license shall automatically terminate. The license provided under the Agreement does not extend to the use of TBG's Instruments of Service on any other project and does not grant Client any rights in the Instruments of Service or other documents or files that is not expressly granted to Client in writing, including, without limitation, rights to TBG's electronic files used in the development of the Instruments of Service, such as AutoCAD or InDesign files.

Upon completion of the services and payment in full of all monies due TBG, Client may retain copies of the Instruments of Service provided under the Agreement. Such documents, in whatever format provided, are neither licensed for, nor intended or represented to be suitable for, reuse on extensions of the Project or on any other project. Additionally, any reuse or distribution of such documents without written verification or adaptation by TBG for the specific purpose intended (for which Client shall pay TBG compensation at mutually agreed rates) will be at Client's sole risk and without liability or legal exposure to TBG, or TBG's independent professional associates or consultants.

CLIENT AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS TBG, ITS INDEPENDENT PROFESSIONAL ASSOCIATES AND CONSULTANTS, FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, FEES, LOSSES, CLAIMS, DEMANDS, LIABILITIES, SUITS, REGULATORY OR OTHER ACTIONS, AND DAMAGES, WHATSOEVER, ARISING OUT OF OR RESULTING FROM SUCH UNAUTHORIZED USE OR DISTRIBUTION.

Revised Project Budget

If the Project budget defined by the Scope of Services is increased or decreased by more than ten percent (10%) after the Schematic Design task, the time and effort required to redesign the Project within the new budget will be considered Additional Services to the Agreement. TBG does not guarantee the accuracy of estimates of cost and Client agrees TBG does not have control over the cost of labor, material, equipment, or services furnished by others, market conditions, or contractors' methods of determining prices or performing the work.

Statements and Payment

Fees for professional services and reimbursable expenses will be invoiced to Client monthly based on the percentage of the work completed for each task. A task-by-task description of work performed will be submitted with each invoice, at Client's request. Payment is due on or before 30 days from the date of the invoice. Client agrees to pay invoices or their undisputed portions on or before the due date. TBG reserves the right to suspend services in the event that invoices exceeding a total amount of \$5,000 remain unpaid for more than thirty (30) days, regardless of the reason.

In the event TBG's invoices are given to an attorney for collection or should TBG seek collection through any form of judicial process, Client shall pay all costs of collection, including but not limited to attorney's fees, expenses, and costs of court.

Suspension and Termination

Client may suspend or terminate the Agreement upon written notice to TBG, in which event, Client shall compensate TBG for all work performed by TBG prior to and including the date TBG receives written notice of said suspension or termination (the date of suspension/termination). TBG is not obligated to resume work following suspension of the work unless Client has paid all outstanding TBG invoices in full.

CLIENT AGREES TO RELEASE, INDEMNIFY, DEFEND, AND HOLD TBG HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM SUCH SUSPENSION.

If Client terminates the Agreement and TBG's services do not continue through the completion of the Project for any reason, Client shall be permitted to use the Instruments of Service (including any electronic files) prepared by TBG and provided to Client, only under the following conditions:

CLIENT SHALL (AND SHALL REQUIRE ANY OTHER DESIGN PROFESSIONALS ENGAGED TO COMPLETE THE IMPROVEMENTS ON THE PROPERTY TO) RELEASE , INDEMNIFY, DEFEND AND HOLD HARMLESS TBG, ITS INDEPENDENT PROFESSIONAL ASSOCIATES, AND ITS CONSULTANTS FROM ANY AND ALL LOSSES, CLAIMS, EXPENSES OR LIABILITIES ARISING FROM (I) THE USE OF TBG'S INSTRUMENTS OF SERVICE AS MAY BE USED, REVISED AND/OR ALTERED AND (II) THE COMPLETION OF THE IMPROVEMENTS ON THE PROPERTY; AND

TBG and its Sub-Consultants have been paid in full for services, materials, expenses, and reimbursables provided through the date of termination. This event does not change the respective ownership and use rights of TBG and Client in the Instruments of Service that are otherwise set forth in the Agreement.

TBG may terminate the Agreement upon ten (10) days' written notice to Client after the occurrence of any of the following:

- Client's failure to pay TBG's invoices within thirty (30) days;
- Suspension of the Project for more than sixty (60) days;
- Client's material default of any terms of the Agreement; or
- Client's failure to execute the Agreement.

LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES

TBG will not be responsible for defects in the work designed or built by others, even to the extent used or relied upon by TBG in rendering its services. TBG will not be responsible for incidental, indirect, or consequential damages, either to Client or to other members of the Design Team and construction team including, without limitation, damages for delay or for construction inefficiencies for any cause whatsoever, loss of use, loss of profits, loss of income and/or rent, loss of reputation, unrealized savings, rental expenses, or diminution of property value. In consideration of the nature of TBG's work and the relative risks involved, the parties agree that in no event shall TBG be liable for damages to client, its assignees, other consultants, the contractor and/or its subcontractors for any claims or damages in excess of the amount of the fees paid to TBG by client.

INDEMNIFICATION

CLIENT AGREES TO INDEMNIFY, DEFEND, AND HOLD TBG AND ITS PRINCIPALS, REPRESENTATIVES, OWNERS, AGENTS, EMPLOYEES AND CONSULTANTS HARMLESS FOR ALL DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES AND EXPENSES, ARISING FROM ANY INTENTIONAL OR NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF CLIENT AND/OR CLIENT'S OWNERS, PRINCIPALS, AGENTS, REPRESENTATIVES, EMPLOYEES, INDEPENDENT CONTRACTORS, AND CONSULTANTS, PERTAINING TO THIS AGREEMENT OR THE PROJECT.

Dispute Resolution

As a condition precedent to either the Client or TBG's filing of any claim in litigation, the President of TBG and Client shall meet within thirty (30) days of a request by either party to attempt to resolve the dispute. If any disputed issues remain, the parties agree that they must participate in nonbinding mediation before either party may institute any litigation or arbitration proceeding. In the event of a dispute, except as otherwise provided in this Agreement, neither TBG nor Client shall be entitled to an award of attorneys' fees. Venue for any dispute arising out of the services provided by TBG under the Agreement shall be in state court in Travis County, Texas. Any applicable statute of limitations shall commence to run, and any cause of action shall be deemed to have accrued, not later than the date of substantial completion of the Project on which TBG's services are provided.

Enforcement

The laws of the State of Texas shall govern the validity and interpretation of the Agreement. In the event any provision in the Agreement is found to be illegal or otherwise unenforceable, the unenforceable provision will be stricken and the remaining provisions shall continue in full force and effect as if the unenforceable provision were never included in the Agreement. Headings are for organizational purposes and may not reflect the full scope of the language that follows. The failure of a party to enforce any provision herein shall not waive that party's right to enforce the same provision or any other provision of the Agreement in the future.

Design-Build Projects Addendum

Client understands and acknowledges that as a method of delivery, Design-Build projects, which include any project or portion thereof for which the method of delivery consists of design and construction services provided under a single entity, present access, accountability, and timing complications related to TBG's Scope of Services; therefore, in consideration of this added risk and TBG's willingness to participate in a design-build method of delivery, Client acknowledges and agrees to the following additional terms with regard to Design-Build projects:

- TBG owes a duty only to Client under the Agreement, TBG's obligations do not flow to others with whom Client has contracted separately and there are no third-party beneficiaries to the Agreement;
- In advance of signing an agreement for services related to a design-build project, TBG will be provided, for review and consideration, the Prime Agreement between Owner and Design-Builder for the Project, as well as the Client's agreement for the design-build, if Client is not a party to the Prime Agreement. **IF TBG IS NOT PROVIDED THE PRIME AGREEMENT AND CLIENT'S AGREEMENT FOR THE**

DESIGN-BUILD, IF NOT THE PRIME AGREEMENT, IN ADVANCE OF TBG ENTERING INTO AN AGREEMENT FOR THE PROJECT WITH CLIENT, CLIENT AGREES TBG SHALL NOT BE LIABLE FOR COMPLIANCE WITH THE TERMS AND CONDITIONS CONTAINED IN SAID AGREEMENTS AND CLIENT AGREES TO DEFEND, INDEMNIFY, AND HOLD TBG HARMLESS FOR SAME;

- TBG will coordinate the work of it and its consultants with Client's other consultants but is not liable for the work of or delay caused by Design-Builder, Contractor, Subcontractors, other consultants, or any other party to the design-build team, or for any contractor's failure to perform its work in accordance with the contract documents or to begin construction before contract documents are complete;
- Client shall provide TBG complete information regarding TBG's portion of the work, and a schedule for TBG's work and allow TBG reasonable time to perform its work in coordination with other consultants on the Project. TBG is entitled to rely on the accuracy of the information provided by Client;
- Client will confer with TBG before issuing interpretations of TBG's documents and in determining whether construction performed based on TBG's documents is in general compliance with TBG's documents. If TBG is retained to provide construction administration responsibilities, any site observation reports generated by TBG, formal or informal, must be communicated promptly by Client to all members of the design-build team and to the project Owner.
- Nothing in the Prime Agreement or any downstream agreement shall be construed to transfer ownership of TBG's Instruments of Service to any party, as TBG maintains all common law, statutory and other reserved rights, including the copyright. As stated elsewhere in these Terms and Conditions, TBG grants only the limited, non-exclusive license to use the Instruments of Service provided to Client, in whatever format provided, for purposes of constructing, using, and maintaining only the Project that is the subject of the Agreement, and grants such license only on the condition that Client substantially performs its obligations under the Agreement, including prompt payment of all sums when due.
- Both TBG and Client agree not to assign the Agreement or any causes of action that arise under it without the express written consent of the other party.
- **INDEMNITY. CLIENT HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TBG, AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, MANAGERS, BENEFICIARIES, EMPLOYEES, AGENTS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, INSURERS, AND SURETIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM ANY AND ALL DEMANDS, CLAIMS, ACTIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, LOSSES, LIABILITIES, ACTUAL DAMAGES, LIENS, JUDGMENTS, AND COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, COSTS OF DEFENSE, COURT OR ARBITRATION COSTS AND REASONABLE ATTORNEY'S FEES AND EXPENSES), TO THE EXTENT SUCH CLAIM CONFLICTS WITH THE CONDITIONS, RIGHTS, AND OBLIGATIONS STATED IN THE DESIGN-BUILD ADDENDUM, INCLUDING CLAIMS RELATED TO TBG'S OWN NEGLIGENT OR INTENTIONAL ACTS, IN WHOLE OR IN PART.**



211 Trade Center, Suite 300
New Braunfels, TX 78130

P 830.214.0544
F 830.214.0627
TBPE Firm F-3257

WWW.RKCI.COM

Proposal No. PNA21-023-00
March 10, 2021

AUTHORIZATION FORM

I HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AUTHORIZATION FORM, INCLUDING ATTACHMENTS, AND AUTHORIZE RABA KISTNER CONSULTANTS, INC. (RKCI) TO PERFORM THE FOLLOWING SERVICE(S): Perform the drilling, sampling, testing and reporting per the scope of work described in Attachment III – Scope of Work.

LOCATION WHERE SERVICES ARE TO BE PERFORMED: New Braunfels, Texas

NAME OF RESPONSIBLE PARTY (CLIENT) THAT APPROVES PAYMENT OF ABOVE SERVICES:

Mr. Hernan A. Jaramillo, P.E./Bain Medina Bain, Inc.

LUMP SUM COST: \$6,941.50

Our invoices are due and payable upon receipt at PO Box 971037, Dallas, Dallas County, Texas 75397-0137. All parties hereby agree that this contract upon acceptance will be performable in Comal County, Texas. Our services will be performed in accordance with this letter agreement and the attachments. Please sign, date, and return one signed copy of this form to provide our firm with written authorization.

SIGNATURE:	X	DATE:	
PRINTED NAME:	Mr. Hernan A. Jaramillo, P.E.		
COMPANY NAME:	Bain Medina Bain, Inc.		
COMPANY ADDRESS:	7073 San Pedro Avenue		
CITY, STATE, ZIP:	San Antonio, Texas 78216		
PHONE NUMBER:	210.494.7223	FAX NUMBER:	
E-MAIL:	hernanj@bmbi.com		

RABA KISTNER CONSULTANTS, INC.

T. Ian Perez, P.E.
Associate

TIP/smb

Attachments: I – Standard Terms and Conditions
II – Schedule of Fees
III – Scope of Work



CONSULTANTS • ENVIRONMENTAL • PROJECT MANAGEMENT • INFRASTRUCTURE



STANDARD TERMS AND CONDITIONS

1. Definitions.

1.1 RK. Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 CLIENT. Person, entity or organization for which RK is rendering services regarding the Project.

1.3 PROJECT. The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 CONTRACTOR. Person, entity or organization providing construction services, including labor and material for the Project.

1.5 SERVICES. The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 AGREEMENT. RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. SERVICES. RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. INFORMATION PROVIDED BY CLIENT. CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the

size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. SITE ACCESS AND SITE SAFETY. CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. SUBSURFACE EXPLORATIONS. Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. CHANGED CONDITIONS. If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. TESTING AND OBSERVATIONS. CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans,

specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement

are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.

12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and

expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF**

SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.

Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. In addition, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of

the project.

23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.
24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.

RKCI GEOTECHNICAL ESTIMATE SHEET

City of New Braunfels
2019- 2024 Bond Program

PROPOSAL #: PNA21-023-00
PROJECT TITLE: Dry Comal Creek - Landa Park Shared Path
CLIENT NAME: Bain Medina Bain, Inc.
CONTACT NAME: Mr. Hernan Jaramillo, P.E.
PHONE #/EMAIL: [210.494.7223/hernanj@bmbi.com](mailto:210.494.7223@hernanj@bmbi.com)

PREPARED BY: TIP
DATE: 03/10/21

#STRUCTURAL 1	5	DEPTH, FT	10	# PAVEMENT	0	DEPTH, FT	10
#STRUCTURAL 2	0	DEPTH, FT	0				
#STRUCTURAL 2	0	DEPTH, FT	0				

	UNIT	# UNITS	COST/UNIT	TOTAL
MOBILIZATION	MILE	60	\$4.95	\$297.00
AUGER DRILLING W/O SAMPLING 0 - 25 FT	FT	50	\$11.00	\$550.00
AUGER DRILLING W/O SAMPLING 25 - 50 FT	FT	0	\$12.00	\$0.00
CORE DRILING AND SAMPLING 0 - 25 FT (ROCK)	FT	0	\$30.00	\$0.00
CORE DRILING AND SAMPLING 25 - 50 FT (ROCK)	FT	0	\$30.00	\$0.00
SPT/ST 0 - 25 FT	PER SAMPLE	25	\$39.00	\$975.00
SPT/ST 25 - 50 FT	PER SAMPLE	0	\$42.00	\$0.00
TCP 0 - 25 FT	PER SAMPLE	0	\$39.00	\$0.00
TCP 25 - 50 FT	PER SAMPLE	0	\$42.00	\$0.00
GROUT BORING HOLE	FT	0	\$4.50	\$0.00
TOTAL DRILLING				\$1,822.00

BORING LAYOUT	MH	4	\$120.00	\$480.00
DRILLING - COORDINATION	MH	2	\$120.00	\$240.00
TRAFFIC CONTROL - COORDINATION	MH	0	\$120.00	\$0.00
TRAFFIC CONTROL	DAY	0	\$1,500.00	\$0.00
LOGGER - ENGINEER/GEOLOGIST	MH	5	\$120.00	\$600.00
VEHICLE TRIP CHARGE	MILE	60	\$0.83	\$49.50
TOTAL LOGGING				\$1,369.50

MOISTURE CONTENT	PER TEST	25	\$13.00	\$325.00
ATTERBERG LIMITS DETERMINATION	PER TEST	5	\$95.00	\$475.00
CALIFORNIA BEARING RATIO TEST	PER TEST	0	\$900.00	\$0.00
HYDROMETER ANALYSIS	PER TEST	0	\$300.00	\$0.00
MATERIAL FINER THAN NO. 200 SIEVE	PER TEST	3	\$60.00	\$180.00
UNCONFINED COMPRESSIVE STRENGTH	PER TEST	0	\$53.00	\$0.00
LIME STABILIZATION TEST	PER TEST	0	\$1,595.00	\$0.00
SULFATE TESTING	PER TEST	0	\$80.00	\$0.00
LIME SERIES CURVE	PER TEST	0	\$500.00	\$0.00
TOTAL TESTING				\$980.00

PRINCIPAL	MH	0	\$185.00	\$0.00
SENIOR PROJECT MANAGER	MH	2	\$180.00	\$360.00
PROJECT MANAGER	MH	2	\$145.00	\$290.00
EIT	MH	16	\$95.00	\$1,520.00
CADD TECH I	MH	0	\$60.00	\$0.00
CADD TECH II	MH	4	\$80.00	\$320.00
ADMIN/CLERICAL	MH	4	\$70.00	\$280.00
TOTAL ENGINEERING				\$2,770.00

TOTAL

\$6,941.50

Raba Kistner

Raba Kistner Consultants, Inc.
Scope of Work

Dry Comal Creek Hike and Bike Trail
New Braunfels, Texas

Project Description

The alignment to be considered in this study is the proposed Dry Comal Creek Hike and Bike Trail from just east of the Walnut Avenue Bridge over the Dry Comal Creek to the Wurstfest Property just north of the Landa Street Bridge over the Dry Comal Creek. The total length is estimated to be approximately 4,000 lineal feet. The hike and bike trail is anticipated to be a shared use pathway consisting of a mix of soft (natural) trails and hard (manmade) trails. The trails are anticipated to utilize existing recent improvements such as the bridge at Walnut Avenue. At this time, there are no specific plans for pedestrian bridges over the Dry Comal Creek and it is anticipated that the pedestrian crossings at the major interchanges will occur beneath the Walnut Avenue bridge, the proposed Guenther Avenue bridge, the Railroad crossing and the Landa Street Bridge.

Field Sampling and Laboratory Testing

To investigate the conditions at this site, we propose the following steps:

- Determine Locations for Proposed Geotechnical Testing (See Figure 1) – RABA KISTNER Consultants, Inc. (RKCI) will drill 5 total borings along the proposed alignment of the Dry Coal Creek Hike and Bike Trail. The borings (P-1 through P-5) will be drilled to maximum depths of 10 ft below the existing ground surface at a spacing of approximately 1,000 LF or as dictated by the client. Exact locations of the borings will be determined during final scoping with the client and the owner.
- Obtain Utility Clearances for Proposed Test Holes - RKCI assumes that all boring locations will be accessible to a conventional, truck-mounted drilling rig. RKCI will contact Texas Excavation Safety System, Inc (Texas811) for clearance of certain utilities. It is expected that the Client will provide information regarding the location of any underground utilities in the vicinity of our borings. RKCI will assist in locating underground utilities provided the Client submits documentation of existing utility locations. No site clearing or traffic control were included in this scope.
- Coordinate With City of New Braunfels for Drilling of Test Holes - Proper notification will be provided to the City of New Braunfels for public notification of lane closures.
- Obtain Test Hole Information - Borings will be conducted at the locations and depths discussed above using industry accepted drilling practices and procedures. If contaminated soils are encountered, drilling will be suspended and environmental drilling and sampling protocols will have to be followed with additional costs to be determined.

- Complete Geotechnical Laboratory Testing of Test Samples - From the borings, representative materials will be collected to define the strength and classification characteristics of the foundation soils. Split-spoon samples (with Standard Penetration Testing) will be completed in the borings. The laboratory testing program may include moisture content tests, Atterberg Limits (plasticity tests, and grain size analyses.

Design Report

RKCI will utilize the information gathered during the field investigation to develop the trail designs to establish anticipated cross sections for the proposed hike and bike trails.

- Prepare Pavement Design Report - Pertinent information needed for the design of the trails will be provided in an engineering report, which will include typical cross-sections and soil conditions encountered.
- The results of the field and laboratory phases of the study in support of the final design will be reviewed by our staff of engineers and geologists. The results of our review, together with the supporting field and laboratory data, will be presented in a written, engineering report. The Design Report will include the following information and recommendations, if applicable:
 - A summary of the field and laboratory sampling and testing program;
 - Boring logs and laboratory testing results;
 - A review of general site conditions including drainage considerations affecting pavement performance as well as a visual summary of pavement distresses encountered at the site;
 - Trail design recommendations; and
 - Trail construction considerations.

Schedule

- Submit Report to City of New Braunfels for Review and Approval - Project setup, boring location, and obtaining permits (as necessary) will take approximately 3 to 5 working days. Drilling and sampling will take approximately 2 working days and laboratory testing will take an additional 7 to 10 working days. Data review, trail design, and development of the DRAFT report will take an additional 10 working days. The DRAFT report will be submitted to the client to provide to the City for review and comment.
- Modify Report Per Comments Received - Comments from the City will be addressed as required and a final design report will be provided.

The final report will be produced as a PDF and will be provided electronically via email.

Lump Sum Fee

Trail and Bridge Study \$6,941.50

Construction Phase Support

The activities to be performed by the Design Engineer during the Construction Phase will be outlined in the Project Work Plan. At this point in time, the Project Work Plan is undefined and the mechanism for construction inspection and observation for this project is unknown. Therefore, RKCI's involvement during construction, at this point in time, is assumed to be limited to confirming that the project is constructed in accordance with the plans and specifications related to the geotechnical recommendations provided in our report and will be based upon visual examination only. It is our understanding that our scope of services will not include providing construction materials testing, unless required by the City.

Additional support will be provided based upon the project work plan and in accordance with the construction inspection procedures to be defined by the City.

* * * * *



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Proposal No. PSF21-080-00
March 11, 2021

Mr. Hernán A. Jaramillo, PE
Vice President
Bain Medina Bain, Inc.
Engineers & Surveyors
7073 San Pedro Ave., San Antonio, TX 78216

**RE: Proposal for Environmental Services
Dry Comal Hike and Bike Trail
New Braunfels, Comal County, Texas**

Dear Mr. Jaramillo:

Pursuant to your request, **Raba Kistner, Inc. (RKI)** is pleased to submit this scope of work to Bain Medina Bain, Inc. (CLIENT) for the above-referenced project. **RKI** previously performed environmental services for the proposed Hike and Bike Trail under Proposal No. PSF18-216-00. **RKI** understands that the hike and bike route has been modified and the reports completed in 2018 need to be updated. The site includes approximately 0.8 miles of proposed trail. This proposal provides a scope of work to evaluate the corridor and update the previously submitted environmental reports related to a Phase I Environmental Site Assessment (ESA-I), Archaeological Pedestrian Study, Waters of the U.S. Evaluation, and Protected Species Habitat Evaluation.

I. SCOPE OF WORK

Task 1 Project Management

RKI will conduct environmental project management activities including initial project set-up, preparing invoices, and scheduling of tasks.

Task 2 Phase I Environmental Site Assessment

RKI will conduct a site visit and update the ESA-I report dated August 13, 2018 to show the revised trail route. The report will be prepared in accordance with the American Society for Testing and Materials (ASTM) *E1527-13, Standard Practice for Environmental Site Assessments*, and ESA-I Process. This standard is consistent and compliant with the Environmental Protection Agency's All Appropriate Inquiry (AAI) Rule and may be used to comply with the provisions of the All Appropriate Inquiry Final Rule. Since the previous report was complete more than six months ago, a new environmental database will be requested. Findings of that report will be included in the revised report.

Task 3 Cultural Resources Investigation and Agency Coordination

Given that the project will take place on city-owned land and is sponsored by publicly-derived funding, the proposed project is subject to review under the jurisdiction of the Antiquities Code of Texas (ACT; Texas Natural Resources Code, Title 9, Chapter 191). These legislations call for the assessment of all proposed improvement activities that have a potential to disturb historically significant resources and significant subsurface deposits on lands owned by the State. Oversight of compliance with the ACT is administered by the Texas Historical Commission (THC).

At minimum an intensive pedestrian survey augmented with shovel testing will be required for the project area to satisfy ACT compliance. Although not anticipated, additional investigations, such as cultural resources monitoring, testing, or data recovery efforts may also be required for the proposed project pending the results of the intensive pedestrian survey and agency consultation. This proposal includes coordination with the THC, composing a scope of work and permit application for an ACT permit, a 1-day intensive pedestrian survey with shovel testing, the production of a technical report, and the preparation and costs of curation for field records and artifacts collected at a state-approved repository.

Agency Coordination, Permitting, and Project Management

RKI will consult with reviewing agencies and generate an ACT permit application and SOW that will clearly outline the methods of investigations for the proposed project. The SOW will be submitted to the THC for review and permit issuance. Once the permit number is received, **RKI** will begin coordination for mobilization of an intensive pedestrian survey for the proposed project. Project management will consist of project set up, coordination of schedules with the CLIENT and subcontractors (if applicable), scheduling **RKI** staff, and establishing management and safety protocols.

Intensive Pedestrian Survey with Shovel Testing

RKI archaeologists will perform an intensive cultural resources survey of the project area. The staff will utilize shovel testing, in addition to the visual inspection of the ground surface, to search for shallowly and deeply buried cultural deposits. If feasible, using only survey-level efforts and field methods, the staff will document and assess the State Antiquities Landmark (SAL) - and National Register of Historic Places (NRHP)-eligibility of cultural resources identified during the survey.

RKI will apply a limited artifact collection policy, as part of which only artifacts that are temporally diagnostic will be collected. Furthermore, depending on the temporal affiliation of a feature, documentation may also include the collection of a sample of the feature content. Diagnostic materials and feature samples can aid in assessing the ages of the deposits and features and will have to be curated at a state-accredited curation facility. By collecting only temporally diagnostic artifacts, **RKI** will limit cost for permit-mandated curation. All work will comply with the THC's Rules of Practice and Procedure, Chapter 26, Section 27, and the Council of Texas Archeologists (CTA) Guidelines for Cultural Resources Management Reports.

Reporting and Curation

Following the completion of the investigations, **RKI** staff will produce a draft technical report of findings. The draft will be produced in accordance with the Rules of Practice and Procedure of the THC, as outlined in Chapter 26, Section 27, and the CTA Guidelines for Cultural Resources Management Reports. It will describe the cultural setting of the project area, methodology, and the investigative findings. The draft report also will include recommendations for further work or no further work with appropriate justifications based on the requirements of 13 TAC 26.5(35), 13 TAC 26.20(1), and 13 TAC 26.20(2). The report will be submitted to the CLIENT for review. Upon approval, **RKI** will submit copies of the draft report to the THC for their 30-day review. Following the completion of the review, **RKI** will make revisions, if any, and prepare the final report under the ACT Permit.

Any diagnostic artifacts collected during field investigations will be submitted for final curation to the University of Texas at San Antonio Center for Archaeological Research for curation. Furthermore, all project related documentation produced during the investigations will be curated in accordance with federal regulation 36 CFR Part 79, and THC requirements for State Held-in-Trust collections.

Task 4 Waters of the U.S. Evaluation

RKI will conduct field investigations on the revised trail route, and update the previously submitted Waters of the U.S. (WOUS) determination and delineation report, dated August 13, 2018, in accordance with current federal delineation methodology including the 1987 U.S. Army Corps of Engineers (USACE) *Wetland Delineation Manual* and *2010 Regional Supplement for the Atlantic and Gulf Coastal Plains*. A determination will be made regarding the presence of potential WOUS along Dry Comal Creek, as defined using prescribed USACE guidance, that may be subject to the Navigable Waters Protection Rule. **RKI** will delineate the Ordinary High Water Mark of Dry Comal Creek where it falls within 50 feet of the proposed hike and bike trail. Should any other potentially jurisdictional features be identified, **RKI** will identify and delineate the boundaries, including special aquatic sites (e.g., wetlands), and collect a minimum of two representative wetland sample data points. If no features are identified, two Wetland Determination Data Forms will be completed to document negative findings.

Task 5 Protected Species Habitat Evaluation

RKI will conduct a site visit and update the assessment of habitat for rare, threatened, and endangered species submitted on August 13, 2018. Since it has been more than six months, **RKI** will obtain an updated Texas Parks and Wildlife Department (TPWD) Natural Diversity Database (TXNDD) Element of Occurrence Records (EOR), U.S. Fish and Wildlife Service IPaC, and updated TPWD Rare Resources by County lists.

II. ITEMS TO BE PROVIDED BY CLIENT

- Property Access
- Project footprint file (CAD, kml, shapefile, or .pdf)

III. LIMITATIONS

Any studies, field visits, or other activities requested by CLIENT or other parties that are not included in this proposal are excluded from this scope of work.

Phase I Environmental Site Assessment

The ESA-I is a limited inquiry into the environmental characteristics of the property. It includes an opinion on the existence of regulated environmental conditions and contamination (e.g., hazardous substances and petroleum products) by an environmental professional based upon visual inspection and an examination of readily available public and facility records, interviews with people knowledgeable about the site.

ASTM E 1527-05 defines "*recognized environmental conditions*" as the presence or likely presence of any hazardous substances or petroleum products on the SITE under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the SITE or into the ground, ground water, or surface water of the SITE. This term is not intended to include *de minimus* conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

This ESA-I does not include intrusive investigations or sampling or analyses of any kind unless authorized as additional scope considerations. Furthermore, the location or identification of undocumented buried tanks or concealed wastes, hidden conditions, and subsurface conditions are not included.

This ESA-I is not intended to be a detailed study to identify or quantify all potential environmental concerns. Other issues not included within the standard ESA-I scope of work, but which may be performed as additional scope services include, but are not limited to, the investigation and/or evaluation of asbestos-containing building materials (ACBM), lead-based paint, lead and other contaminants in drinking water, radon gas, indoor air quality, or ecological, cultural and historical resources (i.e., threatened or endangered species, archeological resources, sole source aquifers, etc.). Such factors could pose an additional "*business environmental risk*" to parties involved and can also be evaluated in conjunction with, or supplemental to the ESA-I. No additional *business environmental risk* considerations are proposed for the ESA-I at this time.

Cultural Resources Investigation

Agency coordination: Based on the information provided by the CLIENT, the proposed project does not require compliance with other cultural resources regulations, such as Section 106 of the National Historic Preservation Act. Should compliance with additional cultural resources regulations be required, additional work may be necessary and a new proposal and fee will be submitted to ensure compliance.

Deep Testing: RKI assumes no deep testing will be required for the proposed project due to the shallow vertical impacts of the proposed undertaking. If vertical impacts from the project reach beyond the capabilities of the pedestrian survey, the reviewing agency may request deep investigation to determine their significance. Costs associated with such investigations will be addressed in a subsequent change order.

Additional testing/data recovery: RKI assumes no additional testing/data recovery will be required for the proposed project. If during the investigations deposits are discovered, and the reviewing agency requests

additional investigation to determine their significance, the costs associated with such investigations will be addressed in a subsequent change order.

Historic-age Above-ground Structures: If any above-ground resources of historic-age are encountered during the course of investigations, **RKI** Archaeologists will thoroughly record the building/structure in relation to any archaeological deposits that might be present and associated with the resources; however, **no** Standing Structure Survey will be completed as a part of this scope of work. A Standing Structure Survey and recommendations for further work associated with the above-ground structure must be conducted and determined by an Architectural Historian that meets the Secretary of the Interior Qualifications for Section 106 of the National Historic Preservation Act.

Documentation of Cultural Resources: **RKI** assumes the documentation of a maximum of two new archaeological sites for the project based on its cultural and environmental setting. Should additional archaeological sites or cultural resources (including above ground structures) be encountered, the costs associated with documenting those resources will be addressed in a subsequent change order.

Access: **RKI** assumes unfettered access the project area. Any right-of-entry permissions, gate combinations, etc. required to access restricted areas should be provide by the CLIENT to **RKI** prior to field mobilization.

Unmarked Burials: In the event that human remains are encountered in any subsurface context, work will halt immediately, precautions will be taken, and a new proposal and fee will be submitted to ensure compliance with the amended Texas Health and Safety Code for unmarked burials.

Special Analysis: No special analyses will be conducted as part of this scope.

Waters of the U.S. Delineation

The scope of work described herein is based on current regulations and implementing guidelines related to Clean Water Act compliance and definitions. Should any changes to regulatory definitions or USACE processes require additional activities that are not outlined in this proposal (e.g. additional coordination, evaluations, documentation, etc.), supplemental authorization will be require to address those activities.

IV. COST AND DURATION

RKI will perform the above tasks for a **Lump Sum Fee of \$23,718.00.**

We are prepared to begin work (desktop studies at a minimum) immediately upon receipt of notice to proceed. Fieldwork and reporting for all proposed scope of work items, except archaeology, can be completed within 15 business days.

RKI is prepared to begin agency coordination and generate a SOW to reviewing agencies within five business days from receipt of a Notice to Proceed. Cultural resources investigations will be completed within an estimated one day. A technical report of investigations will be completed within 30 business days from the completion of field investigations. Please note that once the archeological draft report is submitted to the THC, the Commission has 30-days for review/concurrence.

V. ACCEPTANCE

We appreciate the opportunity of submitting this proposal and look forward to working with you in the development of this project. This proposal and the attachments listed below constitute the contract between us. Please sign below as your acceptance of this contract and to authorize **RKI** to proceed with this project.

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions
II	Schedule of Fees for Professional Services

Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037. All parties hereby agree that this contract upon acceptance will be performable in Bexar County and Comal County Texas.

RKI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed and shall not be duplicated or used in whole or in part for any purpose other than to evaluate this proposal.

Very truly yours,

RABA KISTNER, INC.



Nicolas Post, AICP
Project Manager

NP/bc

Accepted By _____
(Signature)

(Typed or Printed Name)

(Title)

(Date)

Attachments:

- I – Standard Terms and Conditions
- II – Schedule of Fees for Professional Services

Copies Submitted: Above (1 Electronic PDF Copy)



STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.**

1.1 **RK.** Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 **CLIENT.** Person, entity or organization for which RK is rendering services regarding the Project.

1.3 **PROJECT.** The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 **CONTRACTOR.** Person, entity or organization providing construction services, including labor and material for the Project.

1.5 **SERVICES.** The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 **AGREEMENT.** RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. **SERVICES.** RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing

the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans, specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a

warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with

or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.

12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT

communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS,**

DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.

Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. In addition, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.



SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

<u>PERSONNEL:</u>	Principal.....	\$135 to \$250/hour
	Professional.....	\$70 to \$200/hour
	Auto Cad Operator.....	\$65 to \$110/hour
	Technical/Clerical/Administrative	\$40 to \$80/hour

The specific hourly rate within each classification listed above depends on the experience, special training, and qualifications of the personnel needed for the project. For projects requiring work at any hazardous waste site, there will be a \$10 per hour surcharge added to the normal billing rate for all personnel. Consultants to Raba Kistner (RK) will be charged according to their professional classification.

EXPENSES: Use of company automobiles will be charged at \$1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at \$70.00 per day, plus \$1.00 per mile over 50 miles per day. Copies will be charged at \$0.25 per page.

Other project specific charges for use of RK equipment or for RK testing will be in accordance with established fee schedules. All other project specific, third-party costs will be charged at cost plus 15 percent.

Invoices will be submitted monthly for work in progress in our standard format. They are due and payable upon receipt and become past due 30 days after the billing date. Past due invoices may be subject to late charges at the rate of 1-1/2 percent per month (18 percent per annum). In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax will be PAYMENT added to the appropriate service rate charged. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

CONDITIONS: Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.

Proposal No. PSF21-092-00
March 24, 2021



12821 W. Golden Lane
San Antonio, TX 78249

PO Box 690287
San Antonio, TX 78269

P 210.699.9090
F 210.699.6426
TBPE Firm F-3257

WWW.RKCI.COM

WORK AUTHORIZATION FORM

I HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AUTHORIZATION FORM, INCLUDING ATTACHMENTS, AND AUTHORIZE RABA KISTNER, INC. (RKI), TO PERFORM THE FOLLOWING SERVICE(S):

RKI is pleased to submit this proposal to Bain Medina Bain, Inc. (CLIENT) to conduct a Geologic Assessment (GA) in support of the Dry Comal Creek Hike and Bike Trail project. On the basis of information provided for our review, we understand that the linear project spans approximately 4,000 linear feet and that the corridor requiring assessment is approximately 100 feet wide, which translates to a total assessment area of approximately 9.2 acres. The project connects State Highway 46 with Walnut Avenue in New Braunfels (Comal County), Texas. We understand that project planning and engineering design activities are currently underway, but that performance of the field reconnaissance component of the GA is critical at this point in the design process to confirm the absence of any potentially significant recharge features within the proposed development footprint. Following completion of field work, a formal GA report will be prepared in the format required by the Texas Commission on Environmental Quality (TCEQ) for submittal as part of a Water Pollution Abatement Plan (WPAP).

SCOPE OF WORK

We understand that the subject property is located over the Edwards Aquifer Transition Zone (EATZ) as designated on official maps produced by the TCEQ. Although preparation of a WPAP is not typically required for land development activities in this zone that do not involve the installation of petroleum storage tanks, we understand that a WPAP may be required for this project owing to other requirements. The scope of services for this project will include the following:

Task 1 – Field Reconnaissance Mapping and Reporting

- The GA is an integral part of the WPAP, which describes appropriate control measures to mitigate surface water pollution due to development activities and minimize the potential for surface-derived contaminant transport to the Edwards Aquifer via sensitive recharge features that might exist within project boundaries. RKI will conduct a visual geologic assessment of surface conditions within SITE boundaries to identify potential Edwards Aquifer recharge features, including both naturally-occurring and manmade features (e.g., underground utilities) in accordance with TCEQ assessment requirements. Assessment activities will be performed in accordance with applicable provisions set forth in the EAPP rules as specified in *Title 30 of the Texas Administrative Code, Chapter 213*.

- At the time the field survey is conducted, **RKI** will review existing geologic information for the SITE, if available from CLIENT, and collect sufficient information to complete the Geologic Assessment Table (*TCEQ-0585-Table*) and fulfill other reporting requirements pursuant to current TCEQ instructions. Following the completion of field activities, a summary of findings will be provided for CLIENT consideration via email.
- **RKI** will prepare a formal GA report in the format specified for submittal to the TCEQ. It is anticipated that the report will include the following elements:
 - Soils description;
 - Site Geologic Map drawn to scale which illustrates the outcrop of all surface geologic units in addition to the locations and extents of all geologic and manmade features;
 - Stratigraphic Column;
 - Geologic Assessment Table including an evaluation of all geologic and manmade features identified at the subject property; and
 - Narrative description of SITE geology based upon actual field observations.

Unless otherwise directed, **RKI** will prepare and provide an electronic version and two original GA report hardcopies for CLIENT's use.

PROJECT COST AND SCHEDULE

We will provide the above scope of services for a **LUMP SUM FEE of \$3,750.⁰⁰**. The scope of work described above is anticipated to take approximately 2-3 weeks to compete after we receive written authorization to proceed. It is assumed that the project duration will commence as soon as **RKI** is afforded property access and updated site plan(s) for the project are provided by CLIENT.

ASSUMPTIONS

The following assumptions were made with regard to the scope of services described herein:

1. The CLIENT will provide clearance(s) for SITE access and map(s) depicting SITE boundaries to be utilized for the geologic assessment which will be at the same scale as the WPAP. At the project onset, **RKI** will coordinate with CLIENT to obtain appropriate base maps upon which specific geologic information can be presented.
 2. Although **RKI** will conduct limited hand-excavation activities as part of this study effort to assess potential recharge features in accordance with GA requirements, the scope of work does not include performance of intrusive karst feature excavation activities, if determined to be necessary to further evaluate the sensitivity of any naturally-occurring karst features.
- If requested by CLIENT, costs for **RKI** to attend meetings and/or perform additional activities in support of such meetings will be billed on a time and materials basis in accordance with our standard fee schedule for professional services.

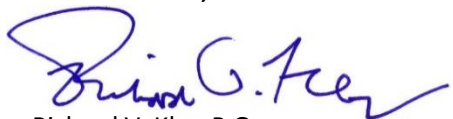
ACCEPTANCE

Unless the party responsible for payment has an established account with **RKI** it may be necessary to hold reports until proper credit approval has been issued or until payment is made in full. Following the initial fee payment described above, any future invoices for additional services are due and payable upon receipt at P.O. Box 971037 Dallas, Dallas County, Texas 75397-1037.

All parties hereby agree that this contract upon acceptance will be performable in San Antonio, Texas. Please sign and return this form to acknowledge and agree to the contract terms and conditions and provide written confirmation of your authorization for our firm to commence work on the specific services outlined herein.

SIGNATURE:		DATE:	
PRINTED NAME:	Mr. Hernán A. Jaramillo, PE		
COMPANY NAME:	Bain Medina Bain, Inc.		
COMPANY ADDRESS:	7073 San Pedro Ave.		
CITY, STATE, ZIP:	San Antonio, Texas 78216		
PHONE NUMBER:	(210) 494-7223	MOBILE NUMBER:	
E-MAIL:	HernanJ@bmbi.com		

RABA KISTNER, INC.



Richard V. Klar, P.G.
Vice President

RVK/law

Attachments:

- I – Standard Terms & Conditions
- II – Schedule of Fees for Professional Services

Copies Submitted: Above (1 Electronic PDF Copy)



STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.**

1.1 **RK.** Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 **CLIENT.** Person, entity or organization for which RK is rendering services regarding the Project.

1.3 **PROJECT.** The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 **CONTRACTOR.** Person, entity or organization providing construction services, including labor and material for the Project.

1.5 **SERVICES.** The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 **AGREEMENT.** RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. **SERVICES.** RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing

the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans, specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a

warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with

or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.

12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT

communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS,**

DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.

Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. In addition, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

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25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.



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EXPENSES: Use of company automobiles will be charged at \$1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at \$70.00 per day, plus \$1.00 per mile over 50 miles per day. Copies will be charged at \$0.25 per page.

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Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

CONDITIONS: Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.



Agenda Item Memorandum

April 15, 2021

TO: NBEDC Board

FROM: Jeff Jewell, Economic and Community Development Director

RE: Agenda Item #8- Update on EDC Strategic Priorities

Background:

The memo serves as an update on the strategic priority ranking exercise completed by the EDC.

Project	Total Score	Rank
Union Pacific Property Acquisition and Construction	89	1
Castell Avenue Right-of-Way Improvements	82	2
Rivermill Infrastructure Support	80	3
Annual allotment for Downtown programming and planning	71	4
Downtown Parking Support	69	5
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Union Pacific Downtown Property Acquisition

The MOU and purchase agreement are nearing completion with Union Pacific for eventual acquisition of the downtown property. One remaining item on the issue of insuring and indemnifying UP's activities after the property is transferred to the City. There is what staff hopes will be the final meeting on May 12. As a recap and in exchange for the right to purchase the ~3.6 acre site downtown, the City or its partners will:

1. Fund conceptual design/engineering work for evaluation of the Corbyn Yard property as a replacement to its current downtown site (\$87,000); and
2. Fund final design and construction of its new facility in Comal County (est. at \$4.25M); and
3. Acquire the site for \$1,500,000.

Castell Avenue Right of Way Improvements

An RFQ was submitted to solicit proposals for the planning and final design of the Castell Avenue Corridor Improvements. The City is currently seeking statements of qualifications from landscape architects/planning/engineering firms to prepare a preliminary design and streetscape plan for Castell Avenue in downtown New Braunfels. This effort will build on the visioning and input efforts garnered during the Downtown Implementation and South Castell Master Plan processes, as well as those relevant goals from Envision New Braunfels. A presubmittal meeting will be held on April 14 to answer questions and provide additional information on the project to interested parties. The proposed schedule has negotiations occurring in May 2021 with an anticipated award sometime in June and July.

Rivermill Redevelopment

The City has completed the County's application for creation of a TIRZ and anticipates a consideration to join in May 2021. There continue to be negotiations for a portion of the site with a large anchor use that would generate significant TIRZ revenue and likely catalyze the rest of the development. Another review of the infrastructure improvements needed for the project imply a total cost of around \$20 million, with the City's TIRZ potentially assuming up to \$12 million of those costs.

Downtown Programming and Planning (Including Parking Support)

The New Braunfels Downtown Board met on November 18th and created a work group to develop a 2-5 year improvement plan. This group, composed of members of the Downtown Board, the New Braunfels Downtown Association Board, Main Street Partners, and other Downtown Stakeholders is reviewing lists of proposed projects to assign priorities, develop estimated costs, and finalize project concepts.

This committee has prepared the preliminary project plan. As they develop more concrete recommendations and define projects, those that the legal department determine are statutorily eligible for funding will be brought forward to the EDC for consideration. At least initially, staff will engage a landscape architecture/engineering firm to provide preliminary designs on some proposed streetscape improvements (traffic calming, landscaping, pedestrian/bike enhancements) in the East San Antonio Street area. Given the significant uptick in daytime and nighttime pedestrian activity in this quadrant, staff believes the emphasis on this corridor could yield some beneficial improvements to the pedestrian and associated retail activity in this sector of downtown New Braunfels.

Staff is also discussing the possibility of a shared parking arrangement to be implemented in concert with another major redevelopment project in the downtown area. Finally, the City's TIRZ policy will be considered by City Council on April 26th.

Hike and Bike Trail Master Plan Initiatives

Over a multi-year time frame and with a reliable funding source, staff is confident that the trail system can quickly expand to serve more households and businesses in New Braunfels. Staff has identified four major trail priorities at different stages of project development. The City Council formally adopted the update to the City's Hike and Bike Trail Master Plan (included). That update identified at least four projects considered high priority:



1. Dry Comal Creek Greenway Trail
2. Alligator Creek (west and east of IH 35)
3. Gruene Loop Trail
4. River Trail

The Dry Comal Creek Trail is intended to connect Landa Street to the Little League Baseball fields on Loop 337 and beyond. Segment one of this trail extends from Walnut Avenue to Landa Street by the Knights of Columbus building. The project was submitted to the MPO's call for projects under its Transportation Alternatives Program (TAP) in April 2021. If awarded, this requires a participating jurisdiction to completely fund the construction documents and a 20% match for construction costs for submission to the TAP. In previous rankings, the DCT has scored well and staff is reasonably confident that the MPO will award 80% of construction costs to the City if it can secure the balance of construction costs and the trail's final design. If awarded, the project would be let in 2023 with a completion date around 2024.

The Alligator Creek trail connects the Creekside development along the greenway up to approximately Goodwin Lane. Significant housing development in this area of the community continues to strengthen the need for parks facilities and a greenway trail connecting these subdivisions under IH 35 and into the Creekside development is a high priority for the City. With City Council approval of the preliminary design expenditure recently approved by the EDC, the consultant has been engaged and is beginning their work on the trail design.

Downtown Vacancy Reduction Incentive Program

Staff has completed a draft of the program and presented the policy framework to the New Braunfels Downtown Board. The City's legal department reviewed the draft policy and ascertained that an EDC contribution to this program does not meet statutory requirements. As such, staff will be adding this proposed incentive program to the downtown TIRZ project plan.

Sports Field Renovations

No progress made on this initiative to date.

Small Area Plans

The City recently engaged Kimley Horn to host a staff workshop to clarify the scope of any proposed streetscape and corridor plan on Castell Avenue and for a West San Antonio Corridor Revitalization Plan. This report will be presented to the EDC in May but it provided the basis for the recent solicitation of qualifications for the Castell Avenue streetscape designs above.

Workforce Housing

Staff is scheduling a joint Planning Commission/Workforce Housing Advisory Committee meeting in June after new planning commission appointments/reappointments are made.

Other Strategic Concerns

The City is currently soliciting qualifications from firms interested in helping the community create a Unified

Development Code (UDC). The UDC is a tool to implement Council-adopted policies including the goals and strategies articulated in Envision New Braunfels and will serve as the City's development "rulebook" for the next 20-30 years. The final document will govern land use, zoning, building form, parking and landscaping requirements, historic preservation, stormwater management and any other element that goes into the development or redevelopment process.