



**New Braunfels Economic Development Corporation  
Board of Directors Regular Called Meeting**

**City Council Chambers  
City Hall  
550 Landa Street, New Braunfels, TX 78130**

For virtual participation, use the link below:  
<https://us02web.zoom.us/j/84663160483> or join by phone:  
833-926-2300  
Webinar ID: 846 6316 0483

**Thursday, May 20, 2021 at 5 P.M.**

**AGENDA**

**Call to Order:** May 20, 5:00 p.m.

**Call of Roll**

**INDIVIDUAL ITEMS FOR CONSIDERATION:**

1. Call to order
2. Approval of the minutes from the April 15, 2021 regular called Meeting
3. Presentation and discussion of Treasurer's Report (Werner)
4. Presentation and discussion of the Advisory Team Report (Meek)
5. Public hearing, discussion and possible action to approve a project expenditure of up to \$140,000 to the SPARK Small Business Center to assist with the operation of an economic development program, an eligible project expenditure related to the operation of an economic development program in accordance with Local Government Code Section 505.102
6. Public hearing, discussion and possible action to approve a project expenditure of up to \$375,000 to the City of New Braunfels for a professional services agreement with Bain Median Bain, Inc. for final design of a portion of the Dry Comal Creek Hike and Bike Trail, an eligible project expenditure related to recreational or community facilities in accordance with Local Government Code Section 505.152 (Jewell)
7. Presentation and discussion of West San Antonio Street corridor planning (Jewell)
8. Presentation, discussion and possible approval of Tax Increment Reinvestment Zone policy (Jewell)
9. Discuss and provide direction on the establishment of advisory board and/or project committees
10. Executive Session:

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:

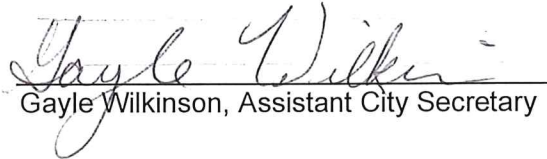
- A. Deliberate Issues Regarding Economic Development Negotiations in accordance with Section 551.087 of the Texas Government Code.

Project Hot Shots

11. Adjournment

**CERTIFICATION**

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the New Braunfels Municipal Building.

  
Gayle Wilkinson, Assistant City Secretary

## May NBEDC Treasurer's Report

May 20<sup>th</sup>, 2021

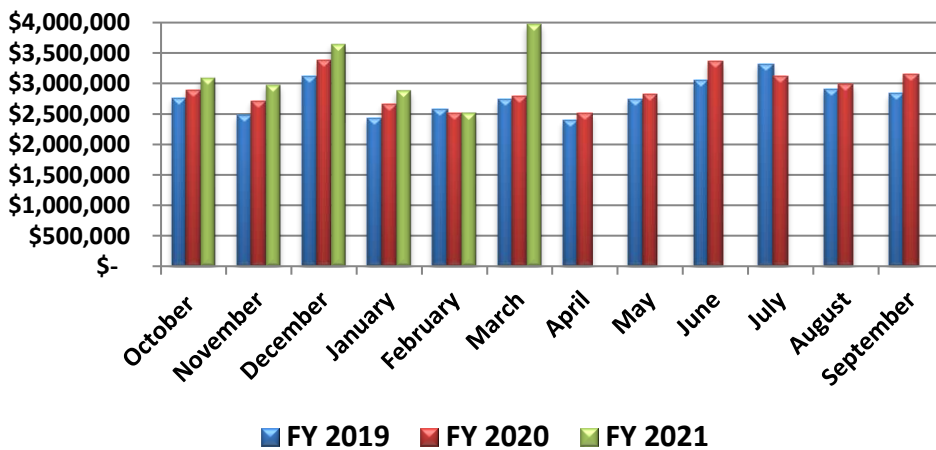
### Overview

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 March increased by 42.3%. When the various adjustments are removed, current to current collections increased by 40.7%. At the time this report was completed, our analytics software had not updated the detailed information for March. However, it is likely that the increase is impacted by a number of factors such as the costs of supplies and services needed to address damage from the winter storm as well as the fact that these figures are now comparing against time frames impacted by business closures (2020). In looking at sales tax returns for other municipalities for March collections, many cities experienced increases comparable to New Braunfels. Fiscal year to date (Oct-Mar), collections are now up 12.4% or approximately \$2.1 million.

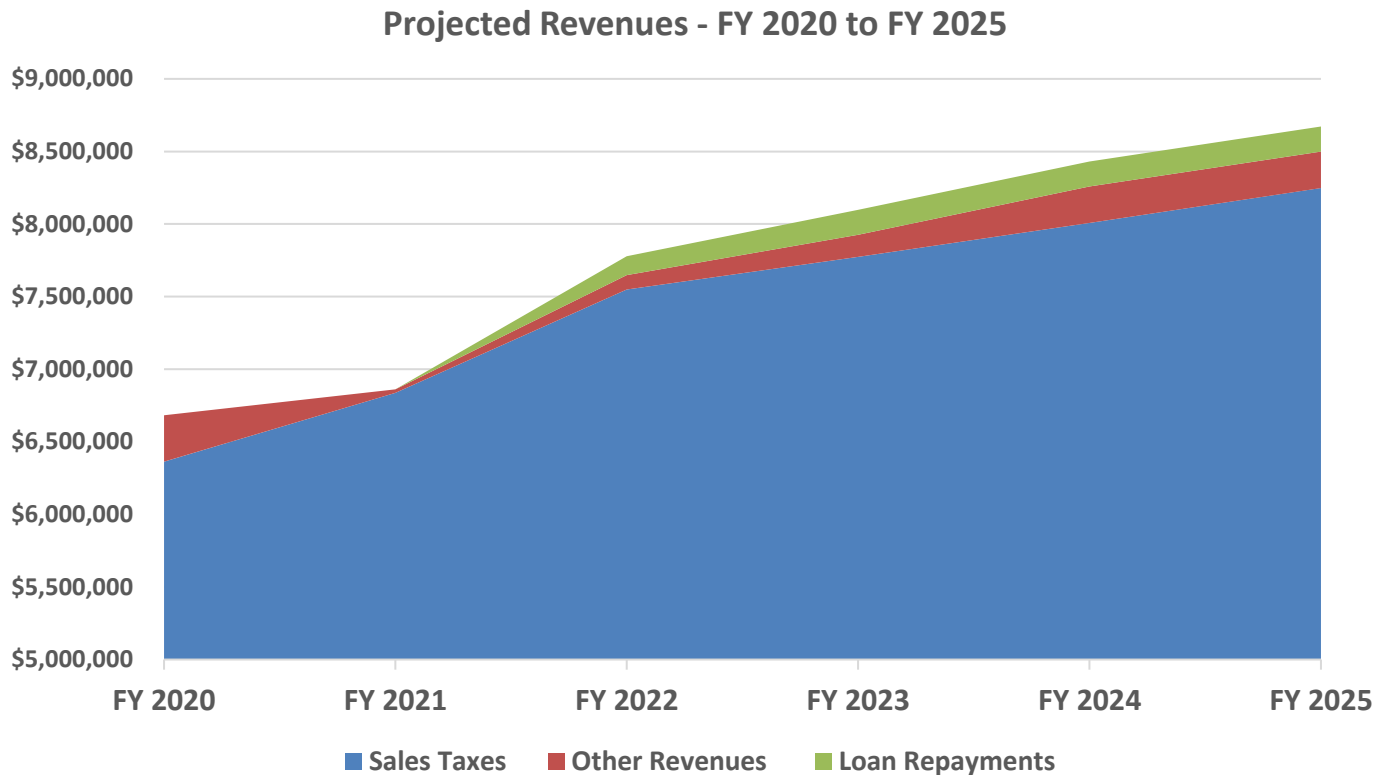
### Gross Sales Tax Collections



For more information contact:

Jared Werner  
Chief Financial Officer  
[jwerner@nbtexas.org](mailto:jwerner@nbtexas.org)  
830-221-4385

## Revenues



Revenue Projections	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Sales Taxes	<b>\$6,363,136</b>	<b>\$6,836,880</b>	\$7,548,433	\$7,774,886	\$8,008,133	\$8,248,377
Interest Earnings	\$139,342	\$25,000	\$100,000	\$150,000	\$250,000	\$250,625
Loan repayments/reimbursements	\$180,510	\$149,837	\$128,954	\$172,954	\$172,954	\$172,954
<b>Total Revenues</b>	<b>\$6,682,988</b>	<b>\$7,011,717</b>	<b>\$7,777,387</b>	<b>\$8,097,840</b>	<b>\$8,431,087</b>	<b>\$8,671,956</b>

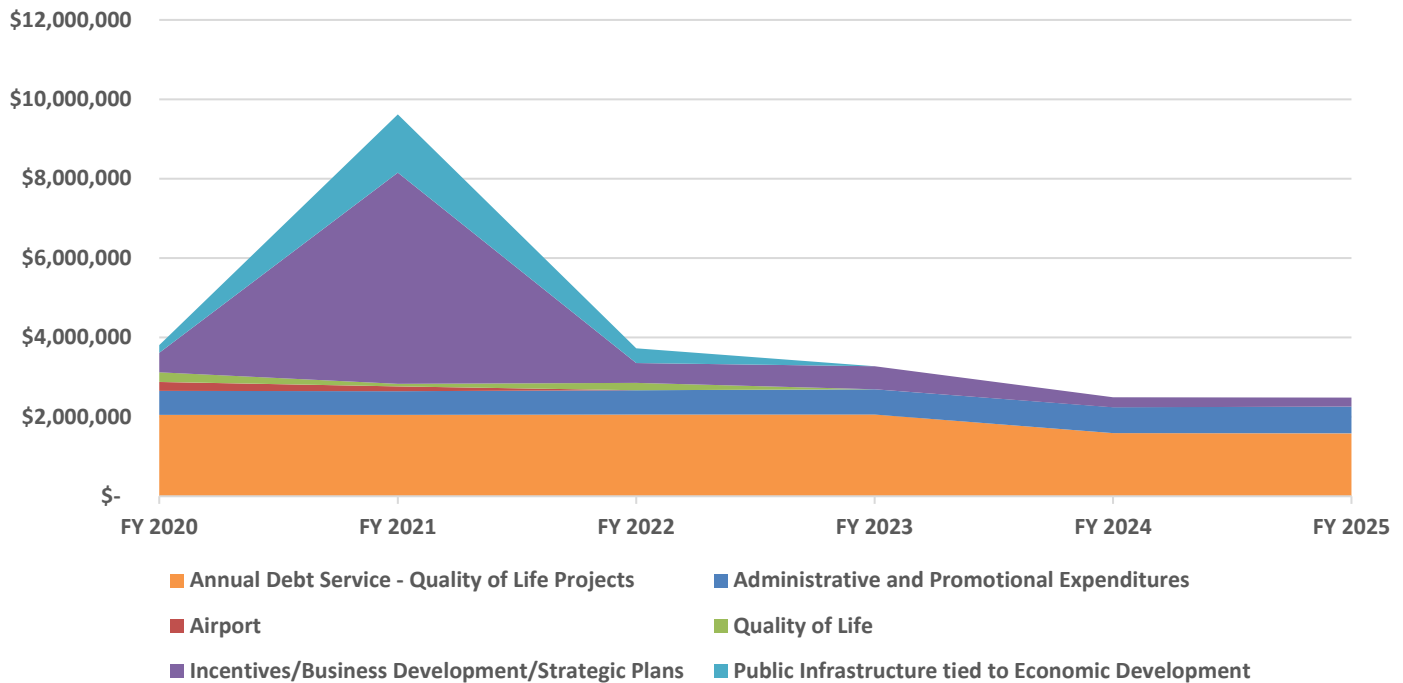
*Small Business Grant and Recovery Efforts* – A modification to the funding arrangements of an economic incentive contract was necessary to provide the funding for the small business grant (FY 2020) and recovery (FY 2021) programs. The result of the modification results in a reduction in net sales taxes 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

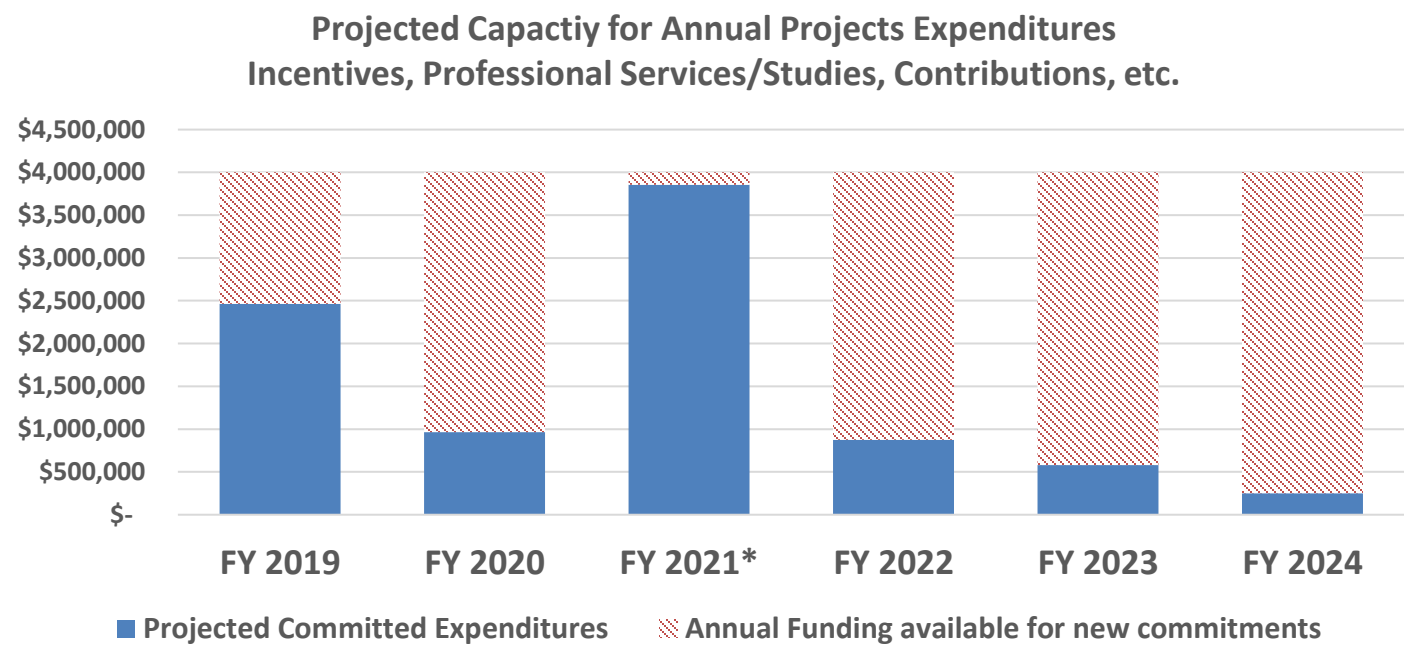
Current Commitment Projections - FY 2020 to FY 2025



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	\$5,318,072	\$503,909	\$578,910	\$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
<b>Total Expenditures</b>	<b>\$3,622,693</b>	<b>\$9,739,503</b>	<b>\$3,546,834</b>	<b>\$3,273,717</b>	<b>\$2,490,524</b>	<b>\$2,484,362</b>

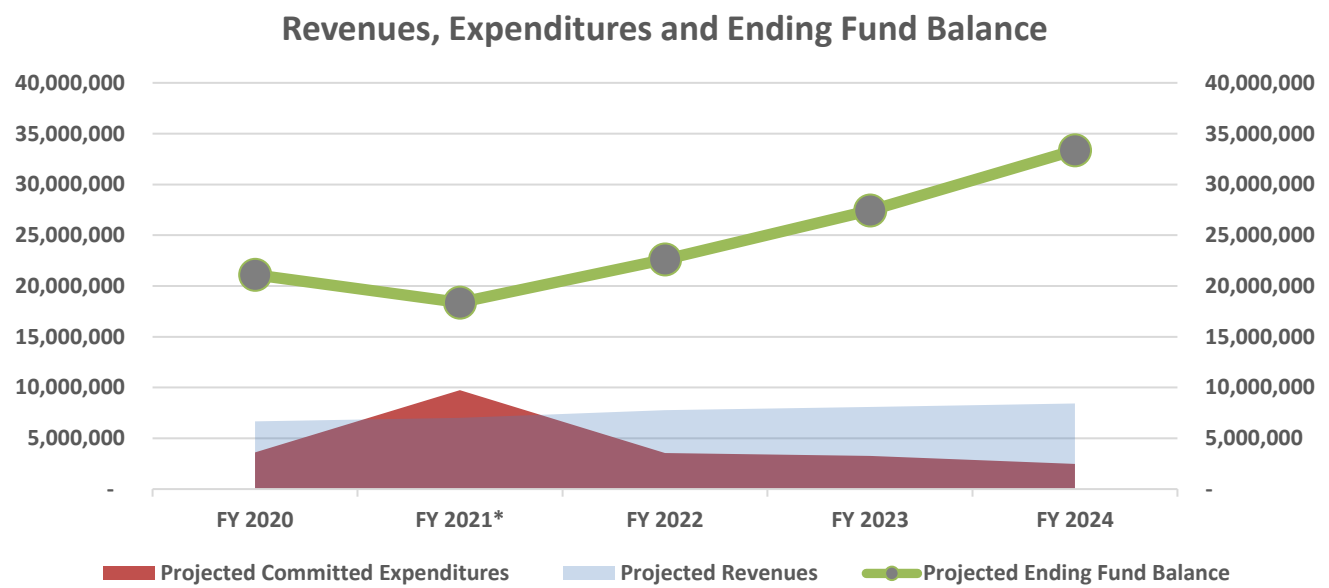
Projections above include all current commitments of the NBEDC – including those most recently approved (Alligator Creek Trail master plan participation and Frantic Holdings Fiber Incentive Project). These projections also include the incentive for Continental Automotive, which is projected to be outlaid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

May 20, 2021

**TO:** NBEDC Board

**FROM:** Jeff Jewell, Economic and Community Development Director

**RE:** Agenda Item #5: Public hearing, discussion and possible action to approve a project expenditure of up to \$140,000 to the SPARK Small Business Center to assist with the operation of an economic development program, an eligible project expenditure related to the operation of an economic development program in accordance with Local Government Code Section 505.102

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### **Background:**

This expenditure will allow the Spark Small Business Center (SPARK) to renew its contract with UTSA to operate the Small Business Development Center (SBDC) in New Braunfels for fiscal years 2021-2022. Since approximately 2011, SPARK, formally known as the Center for Entrepreneurship, has facilitated a partnership with the New Braunfels and Seguin economic development corporations to provide local assistance to business owners and access to programs and services offered by SBDCs. SPARK supports the entrepreneurial and small business environment in New Braunfels by providing free services targeted to existing businesses and aspiring entrepreneurs. SPARK primarily focuses on counseling sessions, expanding access to capital, business planning, training, contracting and procurement opportunities, and exporting initiatives.

During most of 2020, the SBDC satellite center assisted to local businesses with the Paycheck Protection Program, Economic Injury Disaster Loans (EIDL), Disaster Recovery and Assistance from FEMA and SBA Resources due to damages from the winter storm in February, as well as with access to additional grants/loans for particular sectors of the population to include veterans, women and minority-owned businesses. Between April 2020 and March 2021, the center facilitated the origination of nearly \$1,600,000 in loans and retained 36 jobs. The center provided almost 1,800 counseling hours with 139 of these hours provided to new clients. They also provide ongoing counseling to existing clients that have utilized SBDC services in the past.

### **Fiscal Impact:**

In late 2020, the Seguin EDC left the partnership with New Braunfels EDC after the SBDC signed a year-long commitment from October 2020-September 2021. It costs approximately \$17,500/month in total to operate the center. Seguin contributed approximately \$17,500 through the end of 2020. Historically, Seguin EDC contributed ~\$70,000 annually and NBEDC contributed ~\$140,000 to the total program costs. Although the contract with SBDC was in the amount of \$163,460, the additional program costs of ~\$47,000 paid for the Center's operating costs such as rent, utilities, maintenance, taxes, etc. through the end of the contract period

in September 2021. When Seguin left the partnership, this left the center with an estimated \$52,500 shortfall to continue operating through the end of the year. This \$140,000 commitment would fund the shortfall

created by Seguin's exit and provide enough funding for the 90-day period between October 2021 to January 2022. The last project expenditure was approved in January 2020.

A complicating factor in this discussion is that the contract and funding allocation periods do not align. While the contract is signed in October, the funding is usually allocated in January/February, which provides for an approximate 3-month gap between when funding is available, and the contract is signed. This is driven by the historical reason that SPARK needs to provide a 90-day termination notice in its lease and can either continue operating for that period or pay out its lease obligations for the 90 days if an annual contract with SBDC is not signed. The decision had historically been made to fund the center for a 90-day period before ceasing operations and the funding and contracting cycle mismatch allows this to occur if it needs to.

**Recommendation:**

Staff recommends approval of the expenditure. The expenditure is authorized by Section 505.102, which authorizes a Type B corporation to contract with another private corporation to:

- (1) carry out an industrial development program or objective; or
- (2) assist with the development or operation of an economic development program or objective consistent with the purposes and duties specified by the subtitle.

**Attachments:**

SPARK Pandemic Services Summary

Spark 2020-2021 contract

Detailed budget

# Spark Small Business Center/UTSA Small Business Development Center (SBDC) Activities During COVID-19 Pandemic (April 1, 2020 through March 31, 2021)



**SPARK**  
SMALL BUSINESS CENTER

In Partnership with the Small  
Business Development Center



The Spark Small Business Center in New Braunfels works in conjunction with UTSA SBDC. The partnership between Spark and UTSA SBDC provides New Braunfels and surrounding area businesses with no-cost advising on business planning, training, capital and opportunities with referral networks. Below are some statistics and initiatives that have taken place through the challenges of the COVID-19 pandemic.

## **OTHER BUSINESS SERVICE ASSISTANCE OFFERED DURING PANDEMIC**

- Paycheck Protection Program (PPP) - First and Second Round - Adjusted Requirements On Criteria and Forgiveness for 2021
- Economic Injury Disaster Loans (EIDL) - SBA's Disaster Assistance Program
- Disaster Recovery and Assistance from FEMA and SBA Resources Due to Damages from Weather in February
- Additional Grants/Loans - Veterans, Women Owned Businesses, Minority Businesses, Restaurants, Entertainment

## **BUSINESS ASSISTANCE NUMBERS AND AVERAGES**

### **Prospective New Client Inquiries:**

- 402 total prospective new client inquiries annually
- 258 calls - prospective new client inquiries annually
- 144 emails - prospective new client inquiries annually
- 14 total prospective new client inquiries weekly

### **Client Session Counseling Hours:**

- 1770 total counseling hours annually
- 139 new client counseling hours annually
- 1046 existing client counseling hours annually
- 63 counseling hours weekly

## **SPARK SMALL BUSINESS CENTER/UTSA SBDC BRAND FOCUS EFFORTS**

Brand focus efforts for the New Braunfels targeted market have taken place during the pandemic to show a strong sense of partnership between Spark Small Business Center and UTSA SBDC, both being important draws for potential clients. The focused branding is being used in marketing strategies including social media, website updates and print. Website updates and response mechanisms will be implemented on both UTSA SASBDC Spark landing page (through UTSA) and the Spark website. (through Ammo Group).

**Activity:** 3 posts weekly on social media (LinkedIn); 1-2 e-blasts/month (Constant Contact, Newsletter and other events); 2 posts/weekly (Google My Business)

## **PARTNERSHIPS/EVENTS**

In dealing with the challenges of the pandemic, the Spark Small Business Center/UTSA SBDC team has continued to build on business partnerships and work to accomplish goals by transitioning from in-person events, to hosting and participating in virtual events with the following partners:

- UTSA SBDC Training Programs - Promoted by Spark Small Business Center and UTSA SBDC  
20 webinars offered monthly to Spark/UTSA SBDC target markets  
Spark/UTSA SBDC advisors conduct webinars (Start Smart, Tax Credits, PPP/EIDL, Veteran Opportunities)  
Spark/UTSA SBDC hosted events (round table mentor sessions planning for 2021)
- Greater New Braunfels Chamber of Commerce
- New Braunfels Professional Associations
- Women In Business Incubator Program
- New Braunfels Potential Co-Host Businesses
- New Braunfels Lenders/Banks
- UTSA Institute for Economic Development Partners - Minority Business Development Agency



# Spark Small Business Center/UTSA Small Business Development Center (SBDC)

## Client Success Stories

April 1, 2020 - March 31, 2021

### TOTAL FINANCIAL IMPACTS

IMPACT AREA	# IMPACTS	TOTALS
SBA Loans:	3	\$1,005,000
Commercial Loans:	1	\$483,927
Investments:	3	\$280,000
EIDL (SBA Loans):	2	\$71,500
PPP:	2	\$43,290
EIDL (Advance):	1	\$1,000
Jobs Retained:	7	36

NOTE: 4B investment of \$140,000

### SUCSESSES

#### **Two Rivers Running Shoe Store - Michelle Blomstedt - New Braunfels, TX**

Michelle Blomstedt worked with Business Advisor Lucinda Vela at the Spark Small Business Center/UTSA SBDC on her business plan and marketing to get her prepared for opening a new business.

The new business sells athletic shoes, clothes and additional accessories. In addition, Michelle has worked on creating a following/support group which she heads in participating in runs and special athletic event.

#### **Impacts:**

Business Start Up  
\$20,000 Owner Investment  
\$16,000 Retail Sales  
2 New Fulltime Employees

#### **Vicossa Real Estate - Usiosefe Aimiwu - New Braunfels, TX**

Usiosefe Aimiwu has been working with Business Advisor Lucinda Vela on his Vicossa Real Estate business and ILIT, LLC Technology business over the past year on business plans and financial guidance. Vicossa Real Estate recently received a PPP award.

Usiosefe will continue to work with Spark Small Business Center/UTSA SBDC on growing both of his businesses

#### **Impacts:**

Paycheck Protection Program  
\$17,940 PPP  
1 Fulltime Employee Retained

### **In The Weeds - Lika Torline - New Braunfels, TX**

Lika Torline has been working with Business Advisor Lucinda Vela on her skin care business. She is focusing on her business plan, financial assistance, and taking her products into the manufacturing phase

In The Weeds products include facial and body care products, along with candles and essential oils. Lika will continue her work with SBDC to bring her product line into a retail ready phase through manufacturing. She is currently submitting her product line to HEB's Best in Texas category.

#### **Impacts:**

Paycheck Protection Program

\$7,400 PPP

1 Fulltime Employee Retained

### **Hybarger Custom Concrete – Will Hybarger - New Braunfels, TX**

Erica and Will Hybarger used the assistance of the Spark Small Business Center/UTSA SBDC and the Center's Business Advisor, Sam Morgan. Together, they worked on the EIDL and PPP loan process, business expansion, and expansion loan through Frost Bank.

Erica and Will opened the Hybarger Custom Concrete in New Braunfels. They currently have a contract with the city of New Braunfels and have a bid on another for Comal County. The company works the commercial and private sector.

#### **Impacts:**

Business Expansion

\$483,927 Commercial Loan \$200,000 Owner Investment

8 Jobs Retained

### **Just Kids Academy – Kim Peavler - Cibolo, TX**

Kim Peavler used the assistance of the Spark Small Business Center/UTSA SBDC Business Advisor, Crystal Darby. Together, they worked on the SBA loan processing to help their business during the pandemic.

Just Kids Academy is located in Cibolo and the business is now thriving with the assistance from the Small Business Development Center. Ms. Peavler is grateful for being a "great resource during this time of uncertainty" and they are "thankful for being easily accessible and willing to answer questions with a quick response time".

#### **Impacts:**

Business Saved

\$7,800 PPP Loan

\$25,000 EIDL SBA Loan

### **Blue Bonnet Marketing and Promotions, Inc. – Carol Price - New Braunfels, TX**

Carol Price used the assistance of the Spark Small Business Center/UTSA SBDC and the Center's Business Advisor, Larry New. Together, they worked on business formation, saving the business, and the EIDL loan process.

Carol Price has been operating Blue Bonnet Marketing and Promotions, Inc. in New Braunfels when they were affected by the pandemic. She was able to save her business with the help of Larry New.

#### **Impacts:**

Business Saved

\$1,000 EIDL

Advance \$46,500 EIDL Loan

1 Job Retained

### **Digital-D Signs – Rene Sanchez - New Braunfels, TX**

Rene Sanchez used the assistance of the Spark Small Business Center/UTSA SBDC Business Advisor, Sam Morgan. Together they worked on the PPP loan and temporarily altering the business.

Rene Sanchez operates Digital-D Signs in New Braunfels and has been impacted by the pandemic. The company has been temporarily altered due to the current situation but was able to receive the PPP loan with the help of Sam Morgan.

#### **Impacts:**

Business Temporarily Altered

\$10,150 PPP Loan

2 Jobs Retained

### **Texas Spray Foam Solutions, LLC – Dominic Moreno - New Braunfels, TX**

Dominic Moreno used the assistance of the Spark Small Business Center/UTSA SBDC and the Center's Business Advisor, Sam Morgan. Sam helped Dominic with forming the LLC, state DBA, EIN, SCTRCA application process and business plan.

Dominic Moreno opened Texas Spray Foam Solutions, LLC in New Braunfels in August of 2020. They have a growth plan for new markets and customers for the business.

#### **Impacts:**

Business Start Up

\$50,000 SBA Loan

5 current fulltime employees

### **ASAP Hauling – Brad Reichert New Braunfels, TX**

Brad Reichert used the assistance of the Spark Small Business Center/UTSA SBDC and the Center's Business Advisor, Sam Morgan. Together, they decided on how to finance the business. Sam also assisted with billing, setting up DBA, and basic accounting software.

ASAP Hauling is located in New Braunfels. Brad purchased the business from the previous owner and had worked for that owner for more than 10 years. After discussing various financing options, Brad eventually took out a home equity loan and purchased the business.

#### **Impacts:**

Business Started

\$50,000 Owner Investment

### **Integrative Mind Body Therapies – Susan Kaye - Fischer, TX**

Susan Kaye used the assistance of the Spark Small Business Center/UTSA SBDC and the Center's Business Advisor, Larry New and Sam Morgan. Together, Larry helped her file the LLC and EIN. Sam was able to give her resources for legalities of making Susan's assistant a partner in the business. They also discussed Vet TRIIP.

Susan Kaye operates Integrative Mind Body Therapies in Fischer. The company's focus is a team-based client care, therapy, and healing. The company has been able to grow and expand despite the pandemic.

#### **Impacts:**

Business Expanded

\$10,000 Owner Investment

1 Job Retained

### **Gruene River Hotel & Retreat – Paul and Antoinette Wukasch - New Braunfels, TX**

Paul and Antoinette Wukasch used the assistance of the Spark Small Business Center/UTSA SBDC and the Center's Business Advisor, Larry New and Lucinda Vela. Together, Larry helped them with their business plan and securing an SBA loan. Lucinda has been assigned as their new advisor and continues to communicate and assist with their business success.

Paul and Antoinette run a unique boutique hotel offering a getaway location for relaxation in New Braunfels. They hope to provide encouragement to the community while helping to build the tourism industry in Gruene and New Braunfels.

#### **Impacts:**

Business Start Up

\$920,000 SBA Loan

4 Fulltime Employees/11 Part-time Employees

**CONTRACT BETWEEN THE NEW BRAUNFELS ECONOMIC DEVELOPMENT  
CORPORATION AND SPARK SMALL BUSINESS CENTER**

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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 called "EDC", acting by and through its duly authorized officers, and Spark Small Business Center, formerly known as the Center for Entrepreneurship, a Non-Profit Corporation of the State of Texas, hereinafter called "SPARK", acting by and through its officers:

W I T N E S S E T H:

I.

WHEREAS, Texas Local Government Code §501.054 provides the EDC with the powers of non-profit corporations incorporated under the Texas Non-Profit Corporation Act, as amended, and Section Seven of the Bylaws of the EDC allows for the President and Secretary of the EDC to execute any contract which the Board has approved and authorized to be executed; and

II.

WHEREAS, upon the recommendation of the EDC at its meeting on May 20, 2021, and the City Council of New Braunfels, Texas on \_\_\_\_\_, by Resolution 2021-\_\_\_\_\_, approved the EDC's determination that the following funds be allocated to SPARK to participate in a funding arrangement to continue operation of a Small Business Development Center ("SBDC") satellite center to the University of Texas at San Antonio's SBDC in New Braunfels:

- (1) A grant in an amount up to \$140,000 to SPARK for a portion of the costs to continue the operation of a Small Business Development Center satellite office;
- (2) The grant funds, or parts thereof, shall be distributed to SPARK within thirty (30) days after receiving a request(s) from SPARK with attached invoices for expenditures made by SPARK for operation of the satellite center;
- (3) SPARK shall at all times comply with the ordinances of City of New Braunfels and the laws of the State of Texas;
- (4) All funds received by SPARK from EDC as herein provided shall be expended solely for the purposes stated herein and as attached as Exhibit A with regard to the costs of establishing and operating the satellite center in New Braunfels. Any proven breach of this covenant shall be cause for immediate termination of the distribution of funds.



### III.

Any breach of the terms and conditions of this grant by SPARK will result in the repayment of the grant unless EDC and SPARK agree, in writing, to modify the terms of the grant.

### IV.

In the performance of this contract, SPARK shall not discriminate against any user, performer, or customer of the SPARK 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.

### V.

Employment of Undocumented Workers. During the term of this Agreement, SPARK agrees not to knowingly employ an undocumented worker and if convicted of a violation of 8 U.S.C. Sec. 1324a(f), the SPARK shall repay the amount of the Grant and any other funds received by the SPARK from the EDC as of the date of such violation within sixty (60) days after the date the SPARK is notified by the EDC of such violation, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the EDC) as its prime or base commercial lending rate, from the date of such notice until paid.

### VI.

All communications between EDC and SPARK 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. Any communication to SPARK shall be addressed to the President, The Spark Small Business Center, 800 W. San Antonio, St. New Braunfels, TX 78130.

### VII.

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 positions, which would otherwise be enjoyed or occupied by the respective parties for the terms of this contract.

VIII.

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 SPARK.

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

CITY OF NEW BRAUNFELS ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Kathy Meurin, *President*

ATTEST:

\_\_\_\_\_  
Jim Poage, *Corporate Secretary*

APPROVED AS TO FORM:

\_\_\_\_\_  
Valeria Acevedo, *City Attorney*

Spark Small Business Center

By: \_\_\_\_\_  
\_\_\_\_\_, *President*

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

SPONSORED PROGRAM AGREEMENT  
between  
THE UNIVERSITY OF TEXAS AT SAN ANTONIO  
and  
THE SPARK SMALL BUSINESS CENTER

This AGREEMENT is entered into by and between THE UNIVERSITY OF TEXAS AT SAN ANTONIO, an institution of the University of Texas System and an agency of the State of Texas, located at One UTSA Circle, San Antonio, Texas 78249 ("UTSA"), and the SPARK SMALL BUSINESS CENTER, a non-profit corporation located at 940 West San Antonio Street, Suite A, New Braunfels, Texas 78130 ("THE CENTER").

WHEREAS, THE CENTER was created by public and private partnership to provide potential entrepreneurs a comprehensive program of education, support, assistance, and training in all areas of business development; and

WHEREAS, as part of its community service mission, UTSA operates outreach-based small business development programs through its Institute for Economic Development (IED), dedicated to foster small business success; and

WHEREAS, the program contemplated by this AGREEMENT is of mutual interest and benefit to UTSA and to THE CENTER, and will further the objectives of UTSA in a manner consistent with its status as an agency of the State of Texas; and

WHEREAS, UTSA, through its IED, in collaboration with THE CENTER, is uniquely suited in the region to perform the tasks enumerated herein given its existing consistent mission, professional and support staff, and its technical, administrative, and small business support structures.

NOW, THEREFORE, the parties hereto agree as follows:

1. STATEMENT OF WORK. Refer to Attachment "A" incorporated herein for a description of the Program, entitled "UTSA SBDC Satellite Office—New Braunfels".
2. PROJECT DIRECTOR. The Program will be supervised by Richard Sifuentes, Director of the UTSA Small Business Development Center ("SBDC Director"), and operated within the IED. If, for any reason, the SBDC Director is unable to continue to serve as Project Director, and a successor acceptable to both UTSA and THE CENTER is not available, this AGREEMENT shall be terminated as provided in Article 6.
3. EFFECTIVE DATE AND PERIOD OF PERFORMANCE. The effective date of this AGREEMENT ("Agreement Effective Date") shall be October 1, 2020. The Program shall be performed during the period of October 1, 2020, through September 30, 2021 ("Period of Performance"). This AGREEMENT shall remain in effect through the end of the Period of Performance and will be subject to renewal only by mutual written agreement of both parties.
4. PRICE AND PAYMENT. As consideration for UTSA's performance, THE CENTER will pay UTSA an amount equal to its expenditures and reasonable overhead in conducting the Program subject to a maximum expenditure limitation of \$163,460. This AGREEMENT will operate according to the BUDGET attached as Attachment "B" herein, to include the normal operating expenses relative to the Program SCOPE OF WORK attached as Attachment "A" herein. THE CENTER will allow UTSA to transfer up to 10 percent (\$16,346) of the total budget between line items without prior approval of the Spark Small Business Center board in order to allow some flexibility in use of funds during the term of the agreement. This is in line with the amount allowed by the U.S. Small Business Administration through their Cooperative Agreement with UTSA. Both the SCOPE OF WORK and BUDGET are subject to negotiation and administrative approvals by both parties, and may be amended by mutual written concurrence of authorized representatives, consistent with the intent of this overall AGREEMENT. Operating budget expenditures will be processed according to routine UTSA policy and procedure, and with complete reporting transparency to both parties.



Actual expenditures incurred by UTSA pursuant to performance of this AGREEMENT will be billed to THE CENTER on a quarterly basis using UTSA's invoice form. THE CENTER shall remit payment within 30 days of the delivery date of an invoice, referencing the Project Director and Program, delivered to the following address:

The University of Texas at San Antonio  
Attn: Business Manager Office  
One UTSA Circle  
San Antonio, TX 78249

5. DELIVERABLES. Refer to Attachment "A" incorporated herein for a description of deliverables.
6. TERMINATION. Performance under this AGREEMENT may be terminated by THE CENTER or UTSA upon sixty (60) days written notice. UTSA will be reimbursed as specified in Article 4 for all costs and non-cancelable commitments incurred in the performance of the Program, such reimbursement not to exceed the total cost specified in Article 4.
7. PUBLICATIONS AND COPYRIGHTS. UTSA and THE CENTER will be free to publish the results of any research under this AGREEMENT, relative to the Program, but specifically omitting any intellectual property or confidential information of UTSA SBDC ("SBDC") clients not otherwise related to UTSA. Title to and the right to determine the disposition of any copyrights, or copyright enabled material, first produced or composed in the performance of this program shall remain with UTSA, provided that UTSA shall grant to THE CENTER an irrevocable, royalty-free non-exclusive right to reproduce, translate and use all such copyrighted material for its own non-commercial purposes.
8. PATENTS. Title to any invention conceived or reduced to practice in the performance of this program relative to SBDC business assistance activities, but specifically omitting any intellectual property of SBDC clients not otherwise related to UTSA, will remain with UTSA. UTSA shall have the sole right to determine the disposition of any patents or other rights resulting there from, provided that upon issue of any patent on any such invention or discovery (relative to SBDC business assistance activities, but specifically omitting any intellectual property of SBDC clients not otherwise related to UTSA), UTSA shall grant to THE CENTER an irrevocable, royalty-free non-exclusive license for use of such invention or discovery for its own non-commercial purposes.
9. RELEASE OF INFORMATION. UTSA shall have the right to acknowledge THE CENTER, the SBDC Director, the nature of the Program, and the dollar value of this AGREEMENT in UTSA records and reports. No press release will be made regarding the Program unless agreed to in writing by both UTSA and THE CENTER in advance.
10. TITLE TO EQUIPMENT. THE CENTER shall retain title to all furnishings and equipment purchased with funds provided by THE CENTER under this AGREEMENT.
11. NOTICES. All notices or communications to either party by the other will be delivered personally or sent by U.S. registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each and will be deemed given on the date so delivered or so deposited in the mail unless otherwise provided herein.

UTSA:

Technical      Richard Sifuentes  
Director  
UTSA SBDC  
Institute for Economic Development  
The University of Texas at San Antonio  
501 W. Cesar E. Chavez Blvd., Suite 2.312  
San Antonio, TX 78207

Contractual    Silvia E. Cano  
Director, Financial Operations  
Downtown Campus  
The University of Texas at San Antonio  
501 W. César E. Chávez Blvd.  
San Antonio, TX 78207

THE CENTER:

Technical &    SPARK SMALL BUSINESS CENTER  
Contractual    ATTN: Dan Krueger, President  
P. O. Box 311417  
New Braunfels, TX 78131-1417

12. EXPORT ADMINISTRATION. It is understood that UTSA is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent upon compliance with applicable United States export laws and regulations. Furthermore, it is understood that the transfer of certain technical data and commodities may require a license from one or more agencies of the United State Government.

Both UTSA and THE CENTER hereby agree and warrant that the Program contemplated hereunder, and any exchange of technical data, computer software or other commodities resulting there from, shall be conducted in full compliance with the export control laws of the United States Government.

13. INDEPENDENT CONTRACTOR. For the purposes of this AGREEMENT and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing.

14. SEVERABILITY. If any of the provisions of this AGREEMENT in the application thereof to any person or circumstance, is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this AGREEMENT and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

15. DISPUTE RESOLUTION.

(A) To the extent that Chapter 2260, Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this AGREEMENT and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by UTSA and THE CENTER to attempt to resolve any claim for breach of contract made by THE CENTER:

(1) THE CENTER's claims for breach of this AGREEMENT that the parties cannot resolve pursuant to other provisions of this AGREEMENT or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, THE CENTER shall submit written notice, as required by subchapter B of Chapter 2260, to UTSA in accordance with the notice provisions in this AGREEMENT. THE CENTER's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date



and nature of the event giving rise to the claim, the specific contract provision that UTSA allegedly breached, the amount of damages THE CENTER seeks, and the method used to calculate the damages. Compliance by THE CENTER with subchapter B of Chapter 2260 is a required prerequisite to THE CENTER's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Business Officer of UTSA, or such other officer of UTSA as may be designated from time to time by UTSA by written notice thereof to THE CENTER in accordance with the notice provisions in this AGREEMENT, shall examine THE CENTER's claim and any counterclaim and negotiate with CENTER in an effort to resolve such claims.

(2) If the parties are unable to resolve their disputes under subparagraph (A) of this section, the contested case process provided in subchapter C of Chapter 2260 is THE CENTER's sole and exclusive process for seeking a remedy for any and all of THE CENTER's claims for breach of this AGREEMENT by UTSA.

(3) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this AGREEMENT by UTSA nor any other conduct, action or inaction of any representative of UTSA relating to this AGREEMENT constitutes or is intended to constitute a waiver of UTSA's or the state's sovereign immunity to suit and (ii) UTSA has not waived its right to seek redress in the courts.

(B) The submission, processing and resolution of THE CENTER's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

(C) UTSA and THE CENTER agree that any periods set forth in this AGREEMENT for notice and cure of defaults are not waived.

16. LIABILITY LIMITATION. Each Party shall bear all costs, expenses, risks and liabilities incurred by it arising out of or relating to its obligations, efforts or performance under this Agreement. No Party shall have a right to any reimbursement, payment or compensation of any kind from the other in relation to this Agreement, except as provided herein. Each Party agrees to be responsible and assume liability for its own willful or negligent acts or omissions, or those of its officers, agents, or employees, to the full extent authorized by law, and each Party agrees to hold the other harmless from any such liability to the extent allowed by applicable law.

#### 17. MISCELLANEOUS.

(A) Governing Law This AGREEMENT constitutes the entire agreement between the parties relative to the subject matter, and may only be modified or amended by a written amendment signed by both parties. It shall be construed in accordance with the laws of the State of Texas.

(B) Order of Precedence. In the event of any conflict between this AGREEMENT and its attachments, the terms of the AGREEMENT shall prevail.

(C) Force Majeure. Neither party shall be liable for any delay in performance under this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence, provided that notice of such force majeure is delivered in accordance with this Agreement within 15 days following such event.

(D) Compliance with Laws and Policy. UTSA and THE CENTER each certify and represents that its conduct under this Agreement shall be in conformity with all applicable laws, rules, regulations, and ordinances.

(E) Authority. Each of the Parties certifies and represents that this Agreement reflects its full and correct name, that it is fully authorized to enter into this Agreement, and that the person signing this document on its behalf is authorized to commit that Party to the obligations hereunder.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their authorized representative.

THE UNIVERSITY OF TEXAS AT  
SAN ANTONIO

Sandra Garcia  
Signature

Sandra D. Garcia, Ed.D., CRA  
Assistant Vice-President for the Office of Sponsored  
Project Administration

10/13/2020  
Date

SPARK SMALL BUSINESS CENTER

Dan Krueger  
Signature

Dan Krueger  
President

October 6<sup>th</sup>, 2020  
Date



**ATTACHMENT A  
STATEMENT OF WORK  
for  
UTSA SBDC Satellite Office—New Braunfels**

**1. Purpose and Effect of the Program**

The purpose of this STATEMENT OF WORK under the Agreement to which it is attached, is to continue operating the UTSA SBDC Satellite Office—New Braunfels as a cooperative effort of the San Antonio Small Business Development Center operated by the Institute of Economic Development of The University of Texas at San Antonio, and Spark Small Business Center. UTSA and THE CENTER will contribute as described below toward such purpose.

**2. Responsibilities of the Parties:**

**a. University of Texas at San Antonio (UTSA SBDC)**

UTSA agrees that its SBDC will perform the following activities and provide the following resources to support the Program:

- (1) Employ staff (Project Manager, Administrative Associate I) to operate the SBDC Satellite Center in New Braunfels;
- (2) One additional advisor will be assigned to work at the Satellite Office for a total of 8 hours each week beginning January 1, 2021;
- (3) Provide UTSA benefits for Project Manager, Administrative Associate I and one additional advisor, based on the percentage of time expended on project;
- (4) Provide administrative support, such as postage, printing/graphics for promotional materials, training materials, etc.;
- (5) UTSA will provide IT systems, servers, desktop/laptop computers, and software support of UTSA owned computers;
- (6) Copier and related equipment;
- (7) Provide ongoing direction to Project Manager, Administrative Associate I, and Business Advisor relative to tasking, work schedules, functional responsibilities and the like for activities such as, but not limited to, the following:
  - a. One-on-one confidential business advising to existing and potential clients;
  - b. Training classes on small business issues for existing and potential business clients;
  - c. Additional deliverables as UTSA and THE CENTER may agree from time to time.

**b. Spark Small Business Center**

THE CENTER will perform the following activities and provide the following resources to support the Program:

- (1) Mr. Dan Krueger, President will be available to represent THE CENTER in discussions with UTSA concerning the Program;
- (2) Funding as stated in the Agreement;
- (3) Office space at 940 West San Antonio in New Braunfels to house the UTSA SBDC Satellite Office including the cost of utilities;
- (4) Facility and administrative support; such as, but not limited to, cleaning, security, supplies, etc.;
- (5) Support, such as, connectivity, internet & wireless service;
- (6) Access to phone system and other shared office equipment;
- (7) Additional deliverables that UTSA and THE CENTER from time to time may agree upon.

# ATTACHMENT B

## Budget

PROPOSED BUDGET FOR FY 2021 (October 1, 2020 - September 30, 2021)	
UTSA SBDC Satellite Center for Comal and Guadalupe Counties	
DESCRIPTION	BUDGET
<b>A. PERSONNEL</b>	
Project Manager	\$ 59,870
Administrative Associate I	\$ 31,000
Sr. Business Advisor	\$ 8,852
Cost of Living or Merit Increases (3%)	\$ 2,992
Total Salaries and Wages	\$ 102,714
<b>B. FRINGE BENEFITS</b>	
Staff rate 33%	\$ 33,896
Total Fringe Benefits	\$ 33,896
<b>C. TRAVEL</b>	
In-State:	
(1) Travel to staff meetings (3,000 miles @ \$.575/mile)	\$ 1,725
(2) Staff Mileage: Community and client outreach (12,200 miles @ \$.575/mile)	\$ 7,015
Total Travel	\$ 8,740
<b>D. EQUIPMENT</b>	
No additional equipment will be needed	\$ -
Total Equipment	\$ -
<b>E. OTHER</b>	
Memberships in and networking with small business organizations (none)	\$ -
Professional activities & development	
(1) Attendance at ASBDC National Conference for Project Manager	\$ 2,500
(2) Unscheduled professional development activities (1@\$750)	\$ 750
Postage - special event mailings (none)	\$ -
Postage - informational mailings (none)	\$ -
Postage (routine mailings: 20 mailings/month @ \$.54/ mailing X 12 months)	\$ -
Printing/Graphics for promotional materials (1 printing of 1,000 @ \$.20/piece)	\$ -
Training Materials (15 workshops @ \$50)	\$ -
Computer Replacement (No computer replacement)	\$ -
Total Other	\$ 3,250
<b>I. TOTAL UTSA DIRECT COSTS</b>	\$ 148,600
<b>J. TOTAL UTSA IN-DIRECT COSTS (10.0% of total modified direct costs of payments to UTSA)</b>	\$ 14,860
<b>TOTAL UTSA COSTS</b>	<b>\$ 163,460</b>

# SPARK -- Small Business Center

## 2020/2021 BUDGET

### INCOME

DEPOSITS	AMOUNT	NOTE
City of Seguin	\$ 70,000.00	
City of New Braunfels	\$ 140,000.00	
<b>Total Deposits for Fiscal Year 2020/2021</b>	<b>\$ 210,000.00</b>	

### EXPENSES

DATE	ITEM	AMOUNT
October	ADT	\$ 39.99 alarm
November	ADT	\$ 39.99 alarm
December	ADT	\$ 39.99 alarm
January	ADT	\$ 39.99 alarm
February	ADT	\$ 39.99 alarm
March	ADT	\$ 39.99 alarm
April	ADT	\$ 39.99 alarm
May	ADT	\$ 39.99 alarm
June	ADT	\$ 39.99 alarm
July	ADT	\$ 39.99 alarm
August	ADT	\$ 39.99 alarm
September	ADT	\$ 39.99 alarm
		\$ 479.88

October	First Impressions	\$ 260.00 cleaning
November	First Impressions	\$ 260.00 cleaning
December	First Impressions	\$ 260.00 cleaning
January	First Impressions	\$ 260.00 cleaning
February	First Impressions	\$ 260.00 cleaning
March	First Impressions	\$ 260.00 cleaning
April	First Impressions	\$ 260.00 cleaning
May	First Impressions	\$ 260.00 cleaning
June	First Impressions	\$ 260.00 cleaning
July	First Impressions	\$ 260.00 cleaning
August	First Impressions	\$ 260.00 cleaning
September	First Impressions	\$ 260.00 cleaning
		\$ 2,600.00

October	NBU	\$ 120.00 utilities
November	NBU	\$ 120.00 utilities
December	NBU	\$ 120.00 utilities
January	NBU	\$ 120.00 utilities
February	NBU	\$ 120.00 utilities
March	NBU	\$ 120.00 utilities
April	NBU	\$ 120.00 utilities
May	NBU	\$ 120.00 utilities
June	NBU	\$ 120.00 utilities
July	NBU	\$ 120.00 utilities



August	NBU	\$	120.00	utilities	
September	NBU	\$	120.00	utilities	
					\$ 1,440.00
October	Prana Interests LP	\$	1,500.00	Rent	
November	Prana Interests LP	\$	1,500.00	Rent	
December	Prana Interests LP	\$	1,500.00	Rent	
January	Prana Interests LP	\$	1,500.00	Rent	
February	Prana Interests LP	\$	1,500.00	Rent	
March	Prana Interests LP	\$	1,500.00	Rent	
April	Prana Interest LP	\$	1,500.00	rent	
May	Prana Interest LP	\$	1,500.00	rent	
June	Prana Interest LP	\$	1,500.00	rent	
July	Prana Interest LP	\$	1,500.00	rent	
August	Prana Interest LP	\$	1,500.00	rent	
September	Prana Interest LP	\$	1,500.00	rent	
					\$ 18,000.00
October	Prana Interests LP	\$	29.00	water & sewer	
November	Prana Interests LP	\$	29.00	water & sewer	
December	Prana Interests LP	\$	29.00	water & sewer	
January	Prana Interests LP	\$	29.00	water & sewer	
February	Prana Interests LP	\$	29.00	water & sewer	
March	Prana Interests LP	\$	29.00	water & sewer	
April	Prana Interest LP	\$	29.00	water & sewer	
May	Prana Interest LP	\$	29.00	water & sewer	
June	Prana Interest LP	\$	29.00	water & sewer	
July	Prana Interest LP	\$	29.00	water & sewer	
August	Prana Interest LP	\$	29.00	water & sewer	
September	Prana Interest LP	\$	29.00	water & sewer	
					\$ 348.00
October	Prana Interests LP	\$	667.00	Expense reimbursement	
November	Prana Interests LP	\$	667.00	Expense reimbursement	
December	Prana Interests LP	\$	667.00	Expense reimbursement	
January	Prana Interests LP	\$	667.00	Expense reimbursement	
February	Prana Interests LP	\$	667.00	Expense reimbursement	
March	Prana Interest LP	\$	667.00	expense reimbursement	
April	Prana Interest LP	\$	667.00	expense reimbursement	
May	Prana Interest LP	\$	667.00	expense reimbursement	
June	Prana Interest LP	\$	667.00	expense reimbursement	
July	Prana Interest LP	\$	667.00	expense reimbursement	
August	Prana Interest LP	\$	667.00	expense reimbursement	
September	Prana Interest LP	\$	667.00	expense reimbursement	
					\$ 7,337.00
Insurance					
September	Liberty Mutual Insurance	\$	820.00	Property and Gen. Liability Insur.	
August	Miller & Miller	\$	745.00	D & O insurance renewal	
					\$ 1,565.00
October	Time Warner	\$	120.62	internet	
November	Time Warner	\$	120.62	internet	
December	Time Warner	\$	120.62	internet	
January	Time Warner	\$	120.62	internet	

February	Time Warner	\$	120.62	internet	
March	Time Warner	\$	120.62	internet	
April	Time Warner	\$	120.62	internet	
May	Time Warner	\$	120.62	internet	
June	Time Warner	\$	120.62	internet	
July	Time Warner	\$	120.62	internet	
August	Time Warner	\$	120.62	internet	
September	Time Warner	\$	120.62	internet	
					\$ 1,447.44
January	UTSA	\$	44,952.00	10/1/2020 thru 12/31/2020	
April	UTSA	\$	44,952.00	1/1/2021 thru 3/31/2021	
July	UTSA	\$	44,952.00	4/1/2021 thru 6/30/2021	
October	UTSA	\$	44,952.00	7/1/2021 thru 9/30/2021	
					\$ 179,808.00
October	Vontage Business	\$	95.00	office phones	
November	Vontage Business	\$	95.00	office phones	
December	Vontage Business	\$	95.00	office phones	
January	Vontage Business	\$	95.00	office phones	
February	Vontage Business	\$	95.00	office phones	
March	Vontage Business	\$	95.00	office phones	
April	Vontage Business	\$	95.00	office phones	
May	Vontage Business	\$	95.00	office phones	
June	Vontage Business	\$	95.00	office phones	
July	Vontage Business	\$	95.00	office phones	
August	Vontage Business	\$	95.00	office phones	
September	Vontage Business	\$	95.00	office phones	
					\$ 1,140.00
Misc.					\$ 6,000.00
<b>Total Expenses for Fiscal Year 2020/2021</b>					<b>\$ 220,165.32</b>
<b>Surplus/(Deficit)</b>					<b>\$ (10,165.32)</b>



## Agenda Item Memorandum

May 20, 2021

**TO:** NBEDC Board

**FROM:** Jennifer Cain, Capital Programs Manager  
Ylida Capriccioso, Parks Development Manager

**RE:** Agenda Item #6: Public hearing, discussion and possible action to approve a project expenditure of up to \$375,000 to the City of New Braunfels for a professional services agreement with Bain Median Bain, Inc. for final design of a portion of the Dry Comal Creek Hike and Bike Trail, an eligible project expenditure related to recreational or community facilities in accordance with Local Government Code Section 505.152

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### **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.

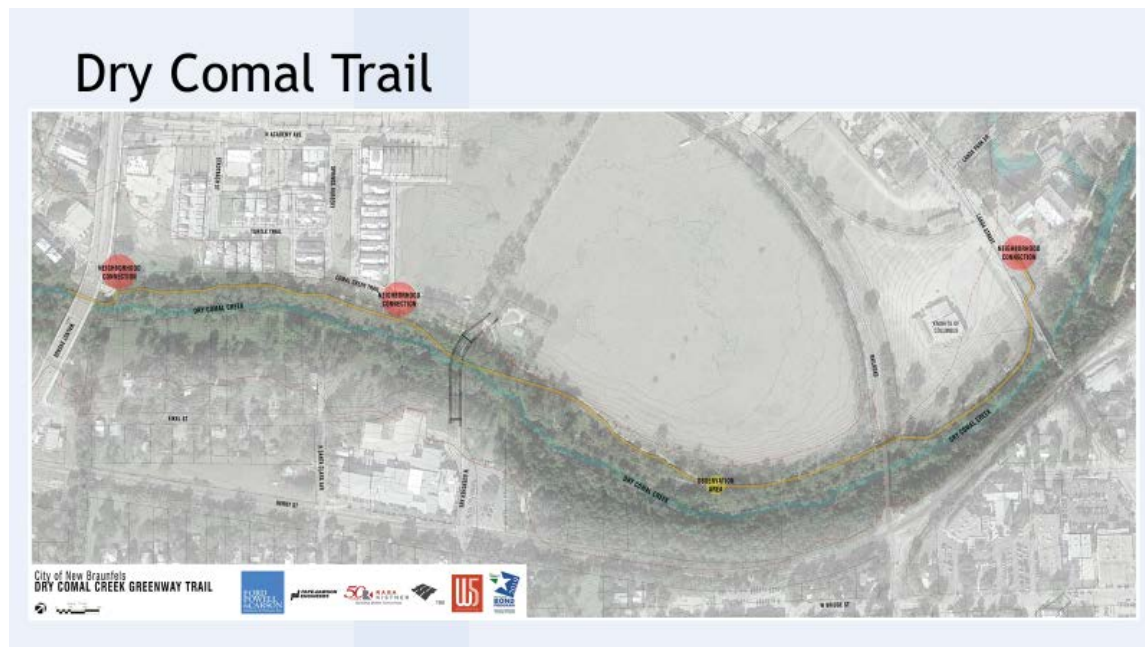
The Dry Comal Creek Greenway is envisioned as a linear trail park that will connect neighborhoods with local destinations, existing and future trails and provide recreational opportunities for residents and visitors. The trail will be approximately 0.75 miles in length between North Walnut Avenue and 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 existing trail by the Little League ballfields is a 2.25-mile loop surrounding the fields and is open to hike and bike traffic and is the only mountain bike trail in the park system. This section of the trail would not provide a direct connection to the existing trail at the ballfields but would provide a portion of the trail section needed to eventually link the two facilities.

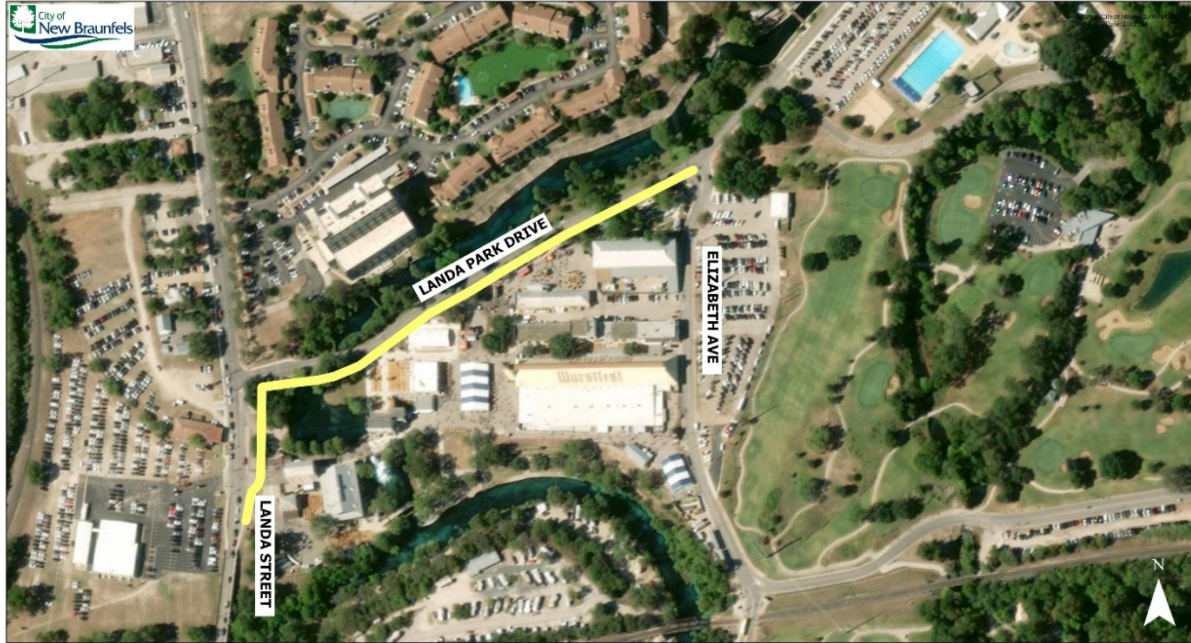
The city completed preliminary design for the project in 2018. The proposed project expenditure would fund the project's final design to include civil, survey, environmental, wayfinding, materials testing and landscape architecture. The City placed this project as its top priority for transportation alternatives funding to the MPO in 2021, 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 (500,000) and right of way and easement acquisition (\$60,000). The total project, including design, construction and acquisition, is estimated at \$2,910,000.

**Fiscal Impact:**

**Attachments:**

## General Site Project Site Plan

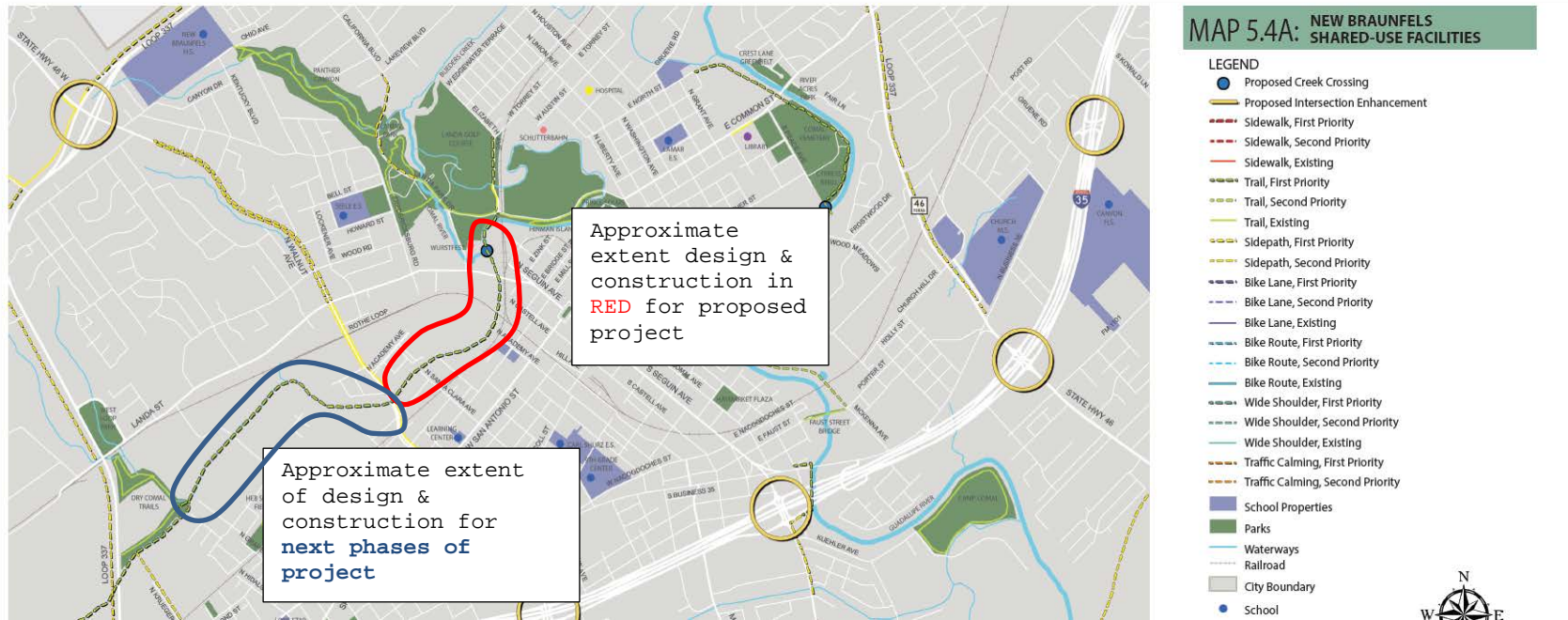




DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of New Braunfels. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of New Braunfels, its officials or employees for any discrepancies, errors, or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



## Shared Use Facilities- Existing and Planned



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.

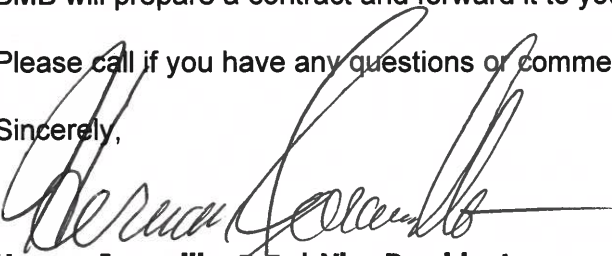
This proposal does not include platting, detention pond design, trailhead design, water fountain design, lighting design, parking lot design, bathrooms, street signage, irrigation, and MEP services.

**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](mailto: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
<b>50% Design Phase</b>	<b>90</b>	<b>\$123,000.00</b>
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
<b>90% Design Phase</b>	<b>75</b>	<b>\$83,000.00</b>
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
<b>100% Design Phase</b>	<b>45</b>	<b>\$26,000.00</b>
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
<b>Bidding and Permitting Phase</b>	<b>30</b>	<b>\$17,000.00</b>
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
<b>Construction Phase</b>	<b>360</b>	<b>\$39,000.00</b>
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
<b>Project Closeout</b>	<b>30</b>	<b>\$3,000.00</b>
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
<b>PROJECT TOTALS</b>		
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
<b>BASE FEE TOTAL</b>	<b>630</b>	<b>\$291,000.00</b>
<b>Additional Services and Allowances</b>		
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
<b>ADDITIONAL SERVICES TOTAL</b>		<b>\$49,960.00</b>
<b>GRAND TOTAL</b>		<b>\$340,960.00</b>

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
			\$250.00		\$200.00		\$180.00		\$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: 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 Positions As Required -----> Insert Approved Hourly Rate for Each Position ----->											
		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	TASK HOURS	TASK / PHASE FEE	
01. Project Management and General Items													
01.010. Site Visit	BMB											\$3,045.00	
01.020. Design Review Meeting			4		4						8	\$1,400.00	
01.030. Project Schedule (Includes Construction)			2		2						4	\$700.00	
01.040. Preparation of Submittal			1		1		1				3	\$470.00	
					1		2			1	4	\$475.00	
02. Layout of Proposed Alignment													
02.010. See Attached Survey LOE	BMB											\$7,850.00	
												\$7,850.00	
03. Dry Canal Hike & Bike Easements													
02.010. See Attached Survey LOE	BMB											\$18,210.00	
												\$18,210.00	
04. Trail Design													
04.010. Quantities	BMB											\$7,840.00	
04.020. Typical Sections ( Existing and Proposed)					2		2			2	6	\$750.00	
04.030. Site Layout Demolition					2		4			8	14	\$1,620.00	
04.040. Plan and Profile Sheets					1		2			2	5	\$600.00	
04.050. Details			2		8		12			8	30	\$3,880.00	
					2		4			2	8	\$990.00	
05. Drainage Design													
05.010. Establish Drainage Discharge	BMB											\$8,820.00	
05.010.010. Drainage Area Map					2		4				8	\$1,180.00	
05.010.020. Model Hydrology (Pre-Project and Post-Project)					4		4				10	\$1,480.00	
05.010.030. Calculate Design Discharges					4		4				10	\$1,480.00	
05.020. Design Storm Drain Facilities (Plan and Profile)													
05.020.010. Trail Culvert Layouts	BMB				4		12			4	22	\$2,860.00	
05.020.020 SWMP/Drainage Report					4		4			4	14	\$1,820.00	
06. Traffic Control Plan													
06.010. Traffic Control details					1		2				3	\$390.00	
07. Environmental and Regulatory Coordination													
07.010. General Environmental Coordination					2						4	\$700.00	
08. Cost Estimating													
08.010. Prepare Cost Estimate					4		4			4	14	\$1,820.00	
09. Communications													
09.010. Assist in Public and HOA Meetings (1)					4					2	10	\$1,610.00	
Printing & Miscellaneous													
BMB Subtotal												\$215.00	
08. Subconsultant Participation													
Landscape Plan & Tree Mitigations	TBG											\$32,500.00	
Public Meeting	TBG											\$17,000.00	
Wayfinding & Public Meeting	TBG											\$6,000.00	
San Antonio - Parks and Recreation Department	TBG											\$9,500.00	

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 ----->													
TASK CODE AND DESCRIPTION	RESPONSIBILITY											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	0	4	67	\$17,000.00	
01. Bid Phase	BMB											\$9,880.00	
01.010. Submit 100% Plans					8	2				2	12	\$1,560.00	
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:  
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**  
**Herman 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	EIT I	EIT 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			
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	
22. 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	
1. 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				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	
2. Layout of Proposed Alignment		BMB											\$7,850.00	
02.010.	See Attached Survey LOE												\$7,850.00	
Printing & Miscellaneous														
BMB Subtotal													\$80.00	
2. 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	
1. 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														
BMB Subtotal													\$95.00	
													\$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

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													
0.1. Subconsultant Participation		0	0	0	0	0	0					\$49,960.00	
WPAP (If Needed)	BMB											\$15,000.00	
TCEQ Fees & Coordination (If Needed)	BMB											\$11,000.00	
Geological Assessment (If Needed)	Raba Kistner											\$3,750.00	
TDLR Fees & Coordination	Accessibility Unlimited											\$2,000.00	
Additional Easements-3 (If Needed)	BMB											\$18,210.00	
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	

<b>Topographic and Tree Survey (approx. 5,600 linear feet)</b>					
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	
					<b>*Total \$36,280.00</b>

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

<b>Dry Comal Hike &amp; Bike Trail Easements</b>					
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	
					<b>**Total (per easement) \$6,070.00</b>

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

<b>Layout of proposed alignment (2 stakings)</b>					
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	
					<b>***Total \$15,700.00</b>

\*\*\*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.

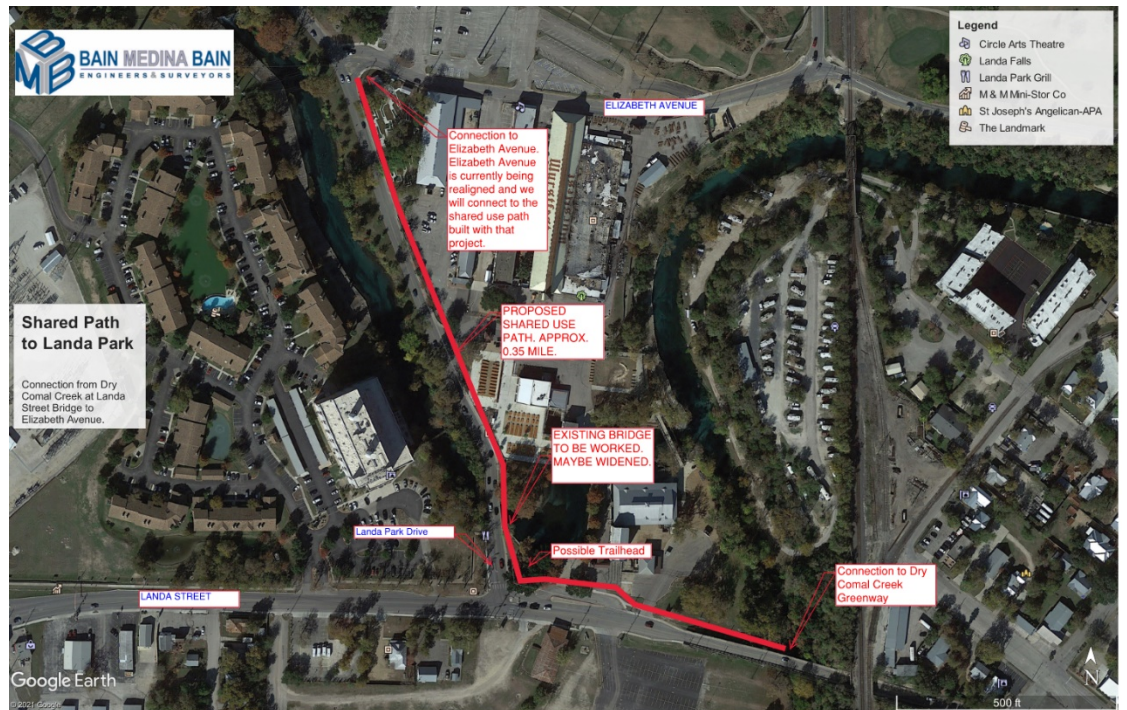
Reference Exhibits 'A' and 'B' below for our understanding of the current program and site which serves as the basis for this Proposal. In the event that the Project scope changes significantly from the exhibits, TBG reserves the right to revise the Scope of Services and associated fee allocations to 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
<b>Development</b>			
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		
<b>Delivery</b>			
Task Six	Bidding and Negotiation Assistance	x	Weeks
Task Seven	Construction Observation	x	Weeks
<hr/>			
<b>Total TBG Time</b>		<b>x</b>	<b>Weeks</b>

## 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
<b>Development</b>				
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
<b>Delivery</b>				
Task Six	Bidding and Negotiation Assistance	\$	2,500	500
Task Seven	Construction Observation	\$	8,000	2,000

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<b>TBG Scope of Services Total Fees</b>	<b>\$</b>	<b>59,500</b>	<b>22,000</b>
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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  
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TBPE Firm F-3257

[WWW.RKCI.COM](http://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.

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

<b>PROPOSAL #:</b>	PNA21-023-00		
<b>PROJECT TITLE:</b>	Dry Comal Creek - Landa Park Shared Path		
<b>CLIENT NAME:</b>	Bain Medina Bain, Inc.		
<b>CONTACT NAME:</b>	Mr. Hernan Jaramillo, P.E.	<b>PREPARED BY:</b>	TIP
<b>PHONE #/EMAIL:</b>	<a href="mailto:210.494.7223@hernanj@bmbi.com">210.494.7223/hernanj@bmbi.com</a>	<b>DATE:</b>	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
<b>TOTAL DRILLING</b>				<b>\$1,822.00</b>

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
<b>TOTAL LOGGING</b>				<b>\$1,369.50</b>

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
<b>TOTAL TESTING</b>				<b>\$980.00</b>

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
<b>TOTAL ENGINEERING</b>				<b>\$2,770.00</b>

**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**

<b><u>PERSONNEL:</u></b>	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](http://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.<sup>00</sup>**. 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.



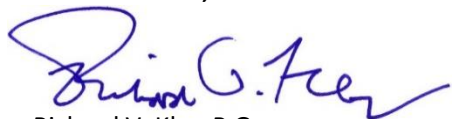
## ACCEPTANCE

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.

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

**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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**SCHEDULE OF FEES FOR PROFESSIONAL SERVICES**

<b><u>PERSONNEL:</u></b>	Principal.....	\$135 to \$250/hour
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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.

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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

May 20, 2021

**TO:** NBEDC Board

**FROM:** Jeff Jewell, Economic and Community Development Director

**RE:** Agenda Item #7: Presentation and discussion of West San Antonio Street corridor planning

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**Background:**

Corridor and small area planning efforts can provide the tools and information needed to implement many aspects of the City's comprehensive plan, Envision New Braunfels. Specifically, small area and corridor plans are utilized to identify, evaluate, and provide recommendations and cost estimates around the types of public improvements needed to further attract private investment in a particular area. Detailed reviews and recommendations around drainage, utilities, access management, regulatory frameworks, multimodal and bike/pedestrian facilities and improvements are some of the typical evaluations that occur to improve the function and appearance of the corridor to harness investments from the private sector. The ultimate purpose of a planning effort would be to identify targeted infrastructure improvements and other changes that would improve corridor aesthetics to create a better sense of place that would attract expanded business enterprise and investments. In addition to the corridor itself, many planning efforts look to initiatives that can harness the private sector to produce more housing opportunities in a defined area, which helps build and support an expanded market for local business growth.

With New Braunfels' intense, rapid growth, the West San Antonio Street corridor from Interstate 35 to Clemens Avenue is in a unique location and poised for a transformation. This major corridor was historically the main gateway into the City from the south and still connects Interstate Highway 35 to Downtown. Remnants of its time as the main highway into town can still be seen, including former automobile fueling and service stations; the boulevard's width itself; even the town's original HEB supermarket was on this thoroughfare. Interstate Highway 35 necessarily routed traffic around this roadway, but that negatively impacted the economic vibrancy of the corridor. Additionally, decades of neglect and disinvestment have chipped away at the periphery of the interior neighborhoods.

Continued and planned public and private investments in and around the downtown core- San Antonio Street bridge and lane changes, Muck & Fuss and Prince Solms Inn improvements, sidewalk enhancements, new mixed use buildings along West and East San Antonio, the pending redevelopment of the NBU Plaza, ADM offices and Producer's coop, and water and wastewater utility upgrades - are continuing to drive a cycle of reinvestment and revitalization in and around this core area of New Braunfels. Redevelopment will continue to down the San Antonio Street corridor and the best way to clear the path for this continued revitalization is to anticipate, plan and adjust infrastructure and the regulatory environment.

If the area is to prosper further and develop in a cohesive and sustainable manner, sound community/neighborhood planning must be done to identify and provide the elements that create quality places. A reinvestment plan for the corridor would help guide and spur additional redevelopment by focusing and leveraging public investments in a way that incentivize desired and needed private investment. There were multiple recommendations, actions and policies from Envision New Braunfels that spoke to the need for concentrated planning efforts in certain areas of the community to achieve the community's vision for the future. Some examples include:

**Strategy: Support Vibrant Centers**

- ACTION 1.1 Create subarea or small area plans that achieve neighborhood scale commercial and recreation within walking distance of homes.
- ACTION 1.2 Create plans for neighborhoods and transitional areas to maintain quality of life
- ACTION 1.5 Promote economic centers by ensuring adequate parking for people to visit businesses/restaurants/shops.
- ACTION 1.7 Target infrastructure investments to support a growing population in preferred locations.
- ACTION 1.3 Encourage balanced and fiscally responsible land use patterns.
- ACTION 1.6 Incentivize infill development and redevelopment to take advantage of existing infrastructure.
- ACTION 1.11 Update policies and codes to achieve development patterns that implement the goals of this plan.
- ACTION 1.14 Ensure regulations do not unintentionally inhibit the provision of a variety of flexible and innovative lodging options and attractions.
- ACTION 1.13 Use Community Development Block Grants, NBEDC funds, and other dollars to fund commercial facade grants and other incentives for reinvestment.
- ACTION 1.12 Collaborate with internal and with external partners and stakeholders to identify and connect sidewalk and bicycle lanes to trails to improve access and connectivity to key hubs and desirable destinations, i.e. downtown, dining and shopping areas, rivers, parks, Wursthof, Gruene, Headwaters at the Comal, Das Rec, etc.

**Strategy: Activate Neighborhoods**

- ACTION 2.5 Encourage diversification of commercial activity Downtown to build on and sustain existing historic resources and maximize structure utilization for economic expansion.

**Strategy: Balance Jobs, Education and Housing Choices**

- ACTION 3.1 Plan for healthy jobs/ housing balance.
- ACTION 3.3 Balance commercial centers with stable neighborhoods.
- ACTION 3.6 Pro actively provide a regulatory environment that remains business and resident friendly.
- ACTION 3.8 Identify underutilized neighborhoods.
- ACTION 3.9 Conduct market analyses of declining areas to show where public investments, including infrastructure, are needed to draw private dollars.
- ACTION 3.10 Change zoning/ land use and platting rules, and create tax and permit fee incentives in underutilized neighborhoods, nodes, and corridors to encourage redevelopment.
- ACTION 3.4 Revitalize the core of New Braunfels to ensure balanced development.
- ACTION 3.31 Adopt policies and ordinances supportive of workforce housing, creating opportunities that make investment in workforce housing more feasible for private and nonprofit developers.



**Strategy: Innovate in Parks and Public Spaces**

- ACTION 4.26 Enhance community sense of place by creating spaces and facilities that reflect the community (e.g. arts and culture, community gardens)

**Strategy: Coordinate Community Investments**

- ACTION 6.5 Utilize public/ private partnerships to guide growth and investment.

**Fiscal Impact:**

A multi-disciplinary planning and preliminary engineering effort for an approximate 1.25 mile corridor would likely take between \$300,000-\$400,000.

## **Agenda Item Memorandum**

**May 20, 2021**

**TO:** NBEDC Board

**FROM:** Jeff Jewell, Economic and Community Development Director

**RE:** Agenda Item #8: Presentation, discussion and possible approval of Tax Increment Reinvestment Zone policy

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### **Background:**

The City Council provided approval to pursue the development of a policy to guide establishment of Tax Increment Zones. This presentation will provide an overview of the draft policy and request feedback from the EDC before going to the City Council for consideration.



## I. Overview

Tax Increment Financing is defined as a public financing mechanism through which the growth in taxes (increment) associated with new development or redevelopment can be captured and used to pay costs associated with economic development for the public good.

Certain acronyms are used throughout this policy and have the following meaning:

TIF	Tax Increment Financing
TIRZ	Tax Increment Reinvestment Zone
ENB	Envision New Braunfels (City's Comprehensive Plan)
EDSP	2017 Economic Development Strategic Plan
DIP	2010 Downtown Implementation Plan
SCAMP	South Castell Area Master Plan

## II. Authority

Under the authority of Chapter 311 of the Texas Tax Code (the "TIF Act"), municipalities are permitted to establish TIRZs. The City of New Braunfels (the "City") will comply with all requirements of the TIF Act regarding TIF expenditures. Investments that identify and target underutilized neighborhoods where additional public investments are needed to draw private dollars will also be considered. The City adopted the Tax Increment Financing Policy and Procedures and Tax Increment Financing Assistance Application in June 2021.

## III. Purpose

The fundamental purpose of TIF is to encourage economic development or redevelopment within a geographic area known as a TIRZ that would not occur without the assistance provided through TIF. The policies and guidelines contained herein are established to sustain, develop, and expand the City's economic base by leveraging private investment for specific types of development.

It is the policy of the City's City Council (the "City Council") and appropriate TIRZ Boards to consider the judicious use of TIF establishment and expenditures for those projects that demonstrate a substantial and significant public benefit and promote development of an area in such development would not occur solely through private investment in the reasonably foreseeable future. Judicious use of the incentive means those projects that fulfill one or more of the following principles:

- Financing **public** infrastructure/improvements
- Funding **extraordinary** costs
- Subsidizing a proposed project that is "**above market**," non-market driven or helping to establish an unproven market
- Obtaining **higher quality** development than the market will generate on its own
- Incentivizing to **attract or retain investment** in a strategic area

Goals envisioned include strengthening the employment and economic base of the City by creating a diversity of mixed ENB land uses, making planned improvements and investments in areas identified in





## ECONOMIC AND COMMUNITY DEVELOPMENT

City plans, undertaking additional investments that encourage vertical growth, infill development and the development of key areas to take advantage of existing infrastructure capacity (Actions 1.3, 1.6, 2.33 ENB). A fundamental consideration for the establishment of either petition or city-created TIRZ is whether the proposed public investments are targeted in underutilized neighborhoods and where it can be reasonably asserted that the investments are needed to draw private dollars.

### **IV. Public Benefits and Qualifying Projects**

Per Chapter 311.004 and as a required finding, improvements in the TIRZ must significantly enhance the value of all taxable real property in the TIRZ and must be of general benefit to the City. Care will be exercised in the use of TIF by thoroughly evaluating each project to ensure that the benefits, which will accrue from the approval of a TIF investment project, are appropriate for the costs that will result. In addition to the ENB goals identified in Section III, the policies and guidelines herein exist to achieve, as permitted by the TIF Act the following public goals and benefits:

- To promote a desirable mix of uses including residential, commercial, and industrial developments that would otherwise not occur.
- To increase and diversify the long-term tax base of New Braunfels.
- To remove blight by encouraging redevelopment of residential, commercial, or industrial structures and/or areas.
- To finance appropriate public improvements to support a growing population in preferred locations. (Action 1.7 ENB)
- To revitalize the core of New Braunfels to ensure balanced development (Action 3.4 ENB)
- To undertake area improvements planned and identified in the DIP, SCAMP, or the EDSP (Action 1.15 ENB)
- To encourage additional unsubsidized private development either directly or indirectly into areas as designated in the ENB and EDSP.
- Encourage diversification of commercial activity Downtown to build on and sustain existing historic resources and maximize structure utilization for economic expansion (Action 2.5 ENB)
- To increase the local employment base and provide economic diversity.
- To connect existing and new destinations and experiences (Action 2.12 ENB)
- To promote aesthetically appropriate architectural designs.
- To encourage the use of existing facilities to expand to year-round facilities through public/private partnerships with booking policies that encourage sports, market shows, conventions, and meetings (Action 2.23 ENB)
- To cultivate an environment where a healthy mix of different housing products at a range of sizes, affordability, densities, amenities, and price points can be provided across the community as well as within individual developments (Action 3.13 ENB)
- To build a performing arts center that can accommodate performances that attract larger audiences and increases the diversity and value of the performing/visual arts (Action 2.28 ENB)
- To make unifying and transitional connections to and from Downtown through efforts like the South Castell Visioning Plan that encourages thoughtful mixed-use projects that blend in with the



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character and design of the community (Action 7.27 ENB)

- To implement recommendations in the Downtown Parking Study (2016): consider parking meters and a Downtown parking garage while maintaining the Downtown's ambiance and cultural heritage (Action 7.28 ENB)
- To reduce or abate environmental hazards which create a barrier to development or to achieve any of the objectives above.
- To accomplish goals, strategies, or objectives as set forth in an approved TIRZ Project and Financing Plan.

### **V. Other Public Policy Considerations**

The City will utilize TIFs to attract investment in underutilized areas and provide some tangible benefits and mitigate impacts to area residents, if any. TIF projects can exacerbate property value increases that compound existing housing affordability issues and that potentially displace residents. Proactive planning, however, can help avoid displacement to mitigate impacts to existing residents. When appropriate, the City will consider utilizing additional policy tools such as a Neighborhood Empowerment Zones (NEZ) that can help the City provide tax and other incentives to achieve community and economic development goals in a particular area. Other community development objectives such as public space, parks and trail connections should also be considered in the project plan.

### **VI. General Policy Requirements**

Per Chapter 311.006, the City may not designate a reinvestment zone if more than 30 percent of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes or 50 percent of the total appraised value of taxable real property in the City and in the industrial districts created by the City.

The City Council will determine the extent of tax increment participation based upon the project and after the due diligence period is completed.

### **VII. TIRZ Administration**

State law provides for the appointment of a TIRZ Board of Directors (the "Board"), which is charged with implementing the Project Plan. TIRZ administration is a shared responsibility of the City and the Board whether City-initiated or Petition-driven. The TIF Act requires the City Council to establish a Board of Directors for each TIRZ that is created. Each Board member is appointed for terms of two years, which are staggered. Each year, the City Council shall appoint one member of the Board to serve as Chairperson for a term of one year that begins on January 1 of the following year.

For a petition created TIRZ, the following requirements for membership on the Board apply:

- An individual must be at least 18 years of age and must own real property in the zone or be an employee or agent of a person that owns real property in the zone;
- Each taxing unit that designated the zone can appoint a majority of members to the Board so that the composition of the Board is at least five and not more than fifteen (15) members;



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- The County that levies taxes on real property in the zone and has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone is entitled to two (2) appointments to the Board;
- Each taxing unit, other than the City that designated the zone and the County that receives appointments as detailed above, that levies taxes on real property in the zone and has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone, is entitled to one member;
- The members of the state senate and state house of representative in whose districts the zone is located are each a member of the board, except that either may designate another individual to serve in the member's place.

In a city or county created TIRZ, the following requirements for membership on the Board apply:

- An individual must be at least 18 years of age and own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county;
- The Board may consist of at least five and not more than fifteen (15) members;
- The County that levies taxes on real property in the zone and has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone is entitled to two (2) appointments to the Board;
- The governing body of the municipality or county that designated the zone may appoint not more than 10 directors to the board; except that if there are fewer than five directors appointed by taxing units other than the municipality or county, the governing body of the municipality or county may appoint more than 10 members as long as the total membership of the board does not exceed 15.

The City administers each tax increment fund on behalf of each TIRZ board. The City is responsible for invoicing, collecting, and depositing tax increment revenues from participating taxing entities. The City is also responsible for the investment, disbursement, and general accounting of funds. The City reviews all requests for tax increment funds, including reimbursement invoices, for compliance with provisions of the Project Plan, Financing Plan, Development Agreement, and Interlocal Agreement(s) and presents such requests for payment to the TIRZ boards for approval prior to making distributions.

In addition, the City is responsible for submitting regular reports to the other taxing entities and to the State Comptroller on the status of the TIRZ. Those reports must include, among other things, the amount and source of revenue in the fund, the amount and purpose of expenditures, the amount of principal and interest due on outstanding bonded indebtedness, if applicable, the total amount of tax increment revenues received, the tax increment base and current captured appraised value retained by the TIRZ, the captured appraised value shared by the municipality or county and other taxing units within the TIRZ, and other information pertaining to the tax increment funds.



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### **VIII. Interlocal Cooperation**

TIF is designed to maximize the TIF incentive by pursuing public-private and interagency cooperation. More resources can be dedicated to a reinvestment goal when organizations coordinate their efforts. To accomplish this, the City could at its discretion identify a collaborator or collaborators at designation or at any point throughout the TIF process. In many instances, the Comal County or Guadalupe County Commissioners Court will be requested to participate. In the event either county is requested to participate after adoption of this policy, the following shall apply:

- If either Comal or Guadalupe counties are participating in a TIRZ, no expenditures of TIRZ monies shall be authorized without an affirmative vote of the Board with the respective county representatives present for the vote; and
- In the event that the county-appointed representatives on the board for the TIRZ do not unanimously agree with a proposed expenditure, county monies provided under an Interlocal Agreement may not be utilized for that expenditure unless and until a subsequent vote of the Comal County or Guadalupe County Commissioners Court approves of that expenditure.

### **IX. General Application and Submittal Requirements**

Projects seeking TIF assistance must provide the following as part of their application. In order to accurately communicate the value of the TIF incentive, and to satisfy statutory requirements that development or redevelopment in the proposed TIRZ would not occur solely through private investment in the reasonably foreseeable future, each application for TIRZ funding must demonstrate a quantifiable need for public assistance. This analysis determines the amount of tax increment to be generated by the TIRZ, as well as the length of time the TIRZ will be in existence. The information is required to evaluate and establish a demonstrable gap in financing for the project to fulfill "but for" requirements promulgated by TIF Act and as required by this policy. Such information shall include:

- Demonstrate financial wherewithal to meet project costs and complete project (i.e. the most current three years of financial statements, complete Sources and Uses budget, and/or Letters of Credit from Bank)
- Identify all sources of funds, including other public sources, private financing and developer equity contribution into the project Sources & uses of funds and flow of funds through lease-up / sell-out. Include debt and equity composition and parties providing equity and debt. Include letters of interest or commitment along with term sheets, signed by agents authorized to provide such commitments.
- Detailed project development budget, including acquisition, construction, soft costs and long-term management costs, if applicable– include any estimated tax credit basis and the basis for construction estimate i.e. construction bids or architect estimate on cost per square foot etc.
- Detailed pro-forma that identifies the pre-TIF rate of return and gap in project financing
- Detailed pro-forma that identifies project-plus-TIF rate of return and financial structure



## ECONOMIC AND COMMUNITY DEVELOPMENT

- Identify proposed security, collateralization, or credit enhancement
- Development team structure with roles and responsibilities detailed. Statement of Qualifications & References for the development team (include experience with public financing sources)
- Financial Statement of owner/developer (last three years)
- Appraisal
- Environmental - Phase I (Phase II if applicable)
- A complete and detailed market feasibility study that addresses the feasibility (viability) of the proposed uses of the development (absorption, vacancy, expenses, capture rates, etc.).
- A complete and detailed cost benefit analysis (employment benefits - number of jobs created, tax base benefit – estimated market value of new development, new property taxes generated, housing benefits- number of new rental or ownership benefits related to the project, parking impacts, etc.)
- A schedule indicating timing of improvements (i.e. commencement and completion dates).

### **X. Qualifying Expenditures**

Tax incentives must be used as authorized by the TIF Act. Money may be disbursed from the tax increment fund only to satisfy claims of holders of tax increment bonds or notes issued for the TIRZ, to pay project costs for the zone, to make payments pursuant to an agreement made under Section [311.010\(b\)](#) dedicating revenue from the tax increment fund, or to repay other obligations incurred for the zone. Examples of eligible projects include but are not limited to the following:

- Public infrastructure within the TIRZ
- Public utility upgrades including electric, water, wastewater, gas, and telecommunications
- Parks
- Pedestrian malls and walkways
- Streets, Sidewalks, Streetscapes
- Road improvements
- Street lighting
- Public parking facilities
- Abatement of environmental hazards
- Land acquisition

### **XI. TIF Project Process**

Procedures for TIF project approval, management and funding include:

- Pre-Application Meeting: Meeting is held with City staff and may include TIRZ Board members (if appropriate), to discuss the proposed project, potential TIF eligibility, and the TIF Application Process and Forms. TIRZ Board members may attend meetings as necessary.
- After the required pre-application meeting, the applicant (including the City) may submit a fully



## ECONOMIC AND COMMUNITY DEVELOPMENT

completed "Application for Tax Increment Financing Assistance" to the designated City staff member. If assistance requested is \$50,000 or less, the applicant may submit a "Short Form Application."

- Preliminary Review: City staff will review the application within 10 working days of receipt to ensure substantial compliance with the guidelines. If City staff determines that an application materially fails to meet the specified criteria, the applicant will be so notified of any additional information needed. The applicant will have 60 days to submit the requested information without having to submit a new application.
- TIRZ Board Review (if applicable): Once City staff has completed the preliminary review, staff will place the proposed project on the next regularly scheduled TIRZ Board agenda for discussion. Once City staff and the applicant have come to agreement on a proposed incentive, staff will develop a "Proposed Term Sheet" and present the draft proposal with a recommendation for TIF funding to the applicable TIRZ Board for consideration. Final terms will be negotiated between the TIRZ Board and applicant.
- If the TIRZ Board recommends approval of the project, the Board will direct staff to prepare the final Term Sheet which will be forwarded with Board recommendation to the City Council and other appropriate governing entities for review and final approval.
  - If the project is not approved, the applicant may submit an amended application.
  - Once approved by the City Council, appropriate officials representing the City, TIRZ Board, and applicant will execute the Development Agreement.
  - TIF eligible expenses will only be paid if all conditions of the Development Agreement are met.
  - Once a project is approved, the TIRZ Chair, Vice Chair and Comal County or Guadalupe County Representative (if applicable), as a committee, are authorized to grant adjustments in the project time line throughout the duration of the project, without further TIRZ Board action, up to a cumulative total of 180 days.
  - Upon submission of an application, all project information provided to or developed by the City is subject to provisions of the Texas Public Information Act and could become public information.
  - Exceptions include certain information made confidential by law; certain personnel information; information relating to litigation; information related to competitive bidding; certain commercial information; location and price of property; legislative documents; certain law enforcement records; and attorney-client privileged information.



# Tax Incremental Financing Policy

May 20, 2021



# Agenda

- TIF background and process
- Common Uses of TIF
- Purpose of a Policy
- Policy Highlights

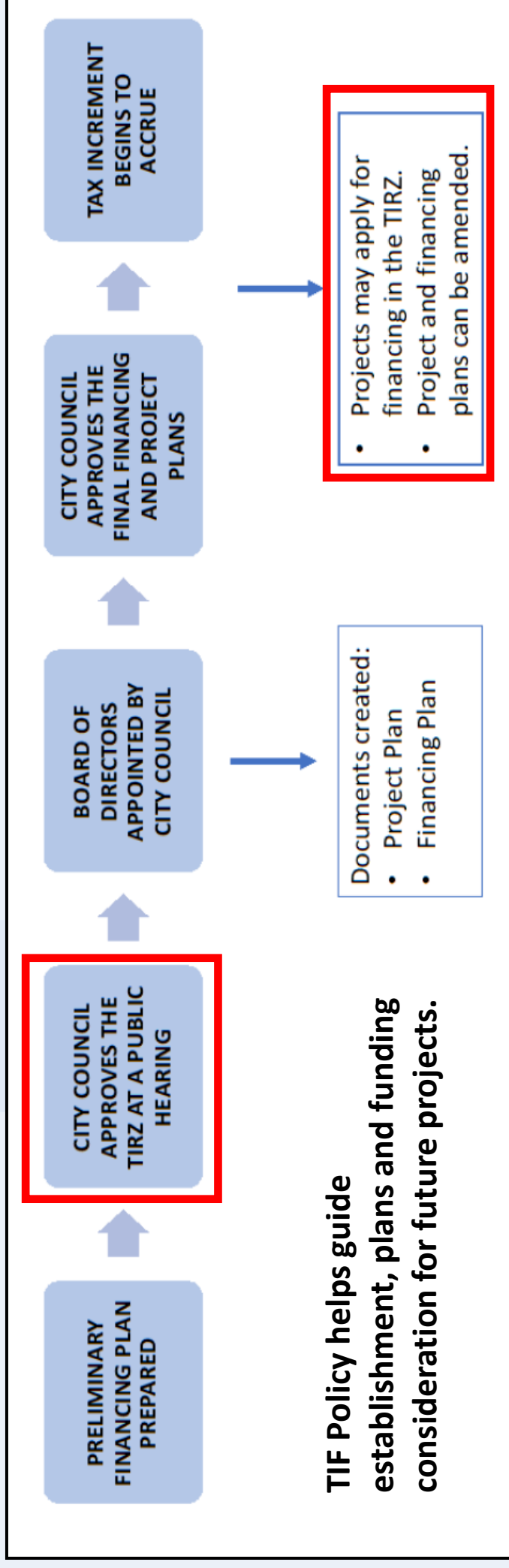


# Tax Increment Financing (TIF)

- TIF is a tool that allows taxing units to utilize the incremental tax revenues to pay for improvements in a particular area
  - Chapter 311, Property Tax Code
- First TIF in California in 1952. Now 48 states allow them.
- Legal mechanism in Texas is referred to as **Tax Increment Reinvestment Zones (TIRZ)**
- Historically viewed as a blight remediation tool to mitigate development risks
- Benefits of TIF as a tool is to ultimately offset the costs of needed public infrastructure to attract additional private investment
- Can be initiated by a taxing entity or private actor

# Tax Increment Financing (TIF)- Process

- City or property owners petition for creation of the TIF
- Governing body prepares a reinvestment zone preliminary project and financing plan
- Public hearing by governing body and designation of reinvestment zone
- Preparation of final project and financing plan
- Contribution to the tax increment fund by other taxing entities



# Common Uses of TIF with Private Development

- Financing **public infrastructure/improvements**
- Funding **extraordinary costs**
- Subsidizing a proposed project that is “**above market,” non-market driven or helping to establish an unproven market**
- Obtaining **higher quality development**
- Incentivizing to **attract or retain investment** in a strategic area
- Achieve **public policy** goals

# TIF- Three Main Types of Criticism

- Development/tax revenues would have occurred/been realized anyway
  - Originated to mitigate blighted areas but have been used to accelerate development in areas where it would likely occur anyway
  - Value increases through normal appreciation often captured in the TIF
- Diverts tax revenue from needed services
  - provision of public services brought about by increased development not accounted for and needs to be funded from elsewhere in the budget
- Exacerbates issues of property value increases and gentrification
  - As TIFs attract investment, real estate values increase, and gentrification occurs



# TIF Program and Policy Considerations

- TIF should focus on capturing desired real estate projects with infrastructure support or gap financing
- Four primary conditions:
  - The project should **contribute to public policy goals**
  - Project is **economically feasible** and has a reasonable chance of success
  - Project would not proceed as desired **‘but for’** the assistance
  - Project **pays for itself though generated revenues or justifies the investment with economic and/or community impacts**
- Undertaken with developers with an established track record, financial capacity and known financial partners
- In most instances, shift risk to the private sector through reimbursement mechanisms after completion

# Establishing the Need for TIF Assistance

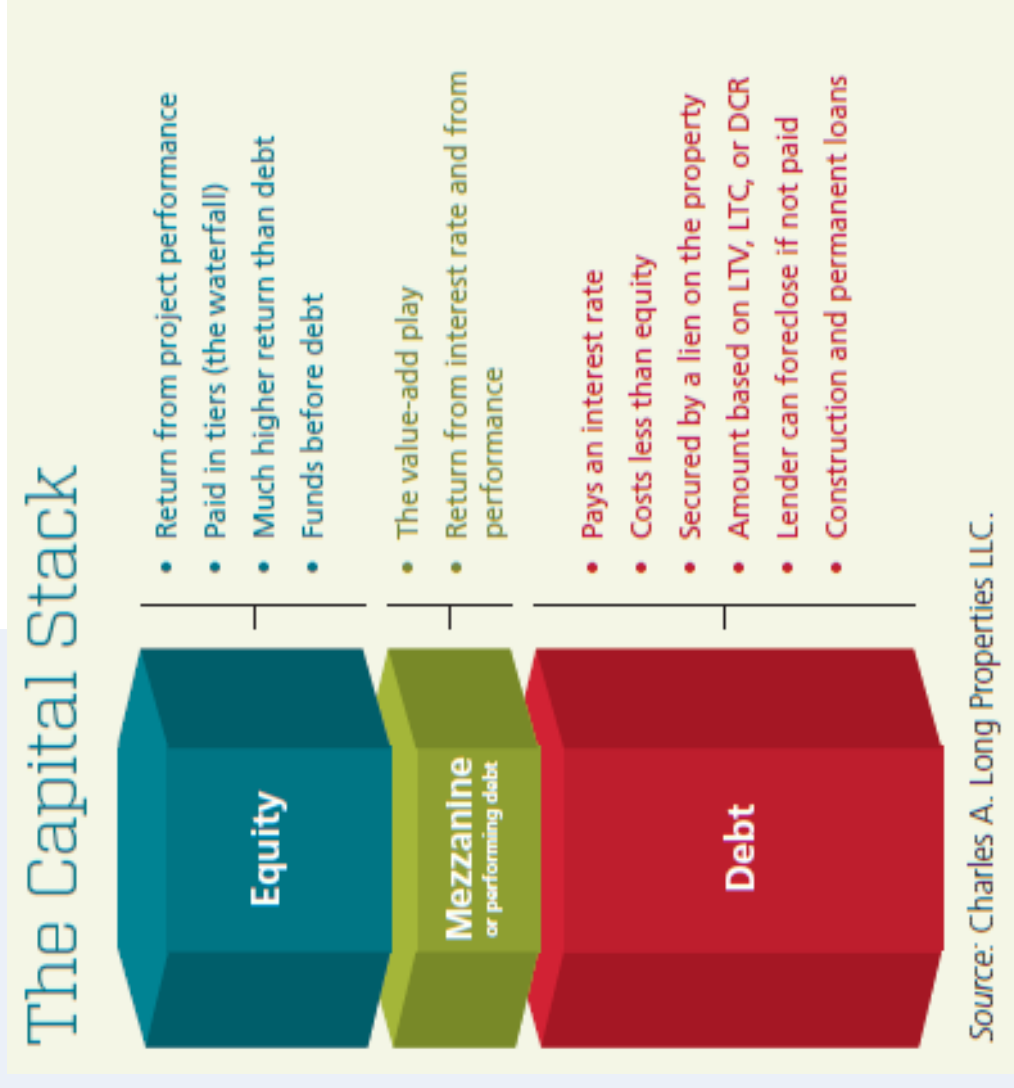
## The “But For” Approach:

Real estate investment levels are a function of value and not of cost

Establish a “financing gap” – shortfall between a project’s cost and its market value under current conditions

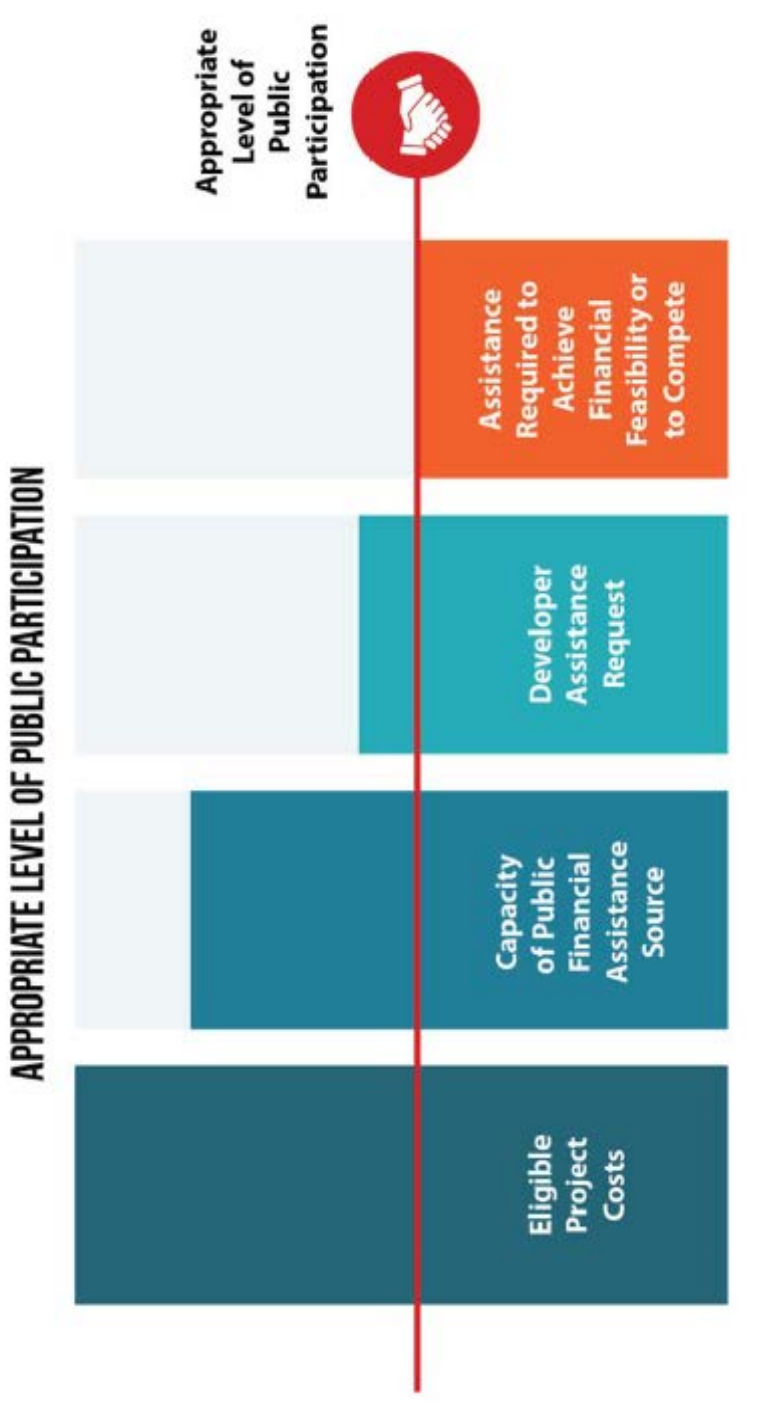
Understand the project’s economics and returns

Attraction of capital to a project is a function an assessment of its overall financial feasibility



# Determining Level of Need

- Evaluation of project in accordance with underwriting/due diligence requirements
- Establishes level of assistance required to achieve financial feasibility
- Amount of assistance required to achieve the rate of return for the project to be financially feasible



Benefits of Approach:

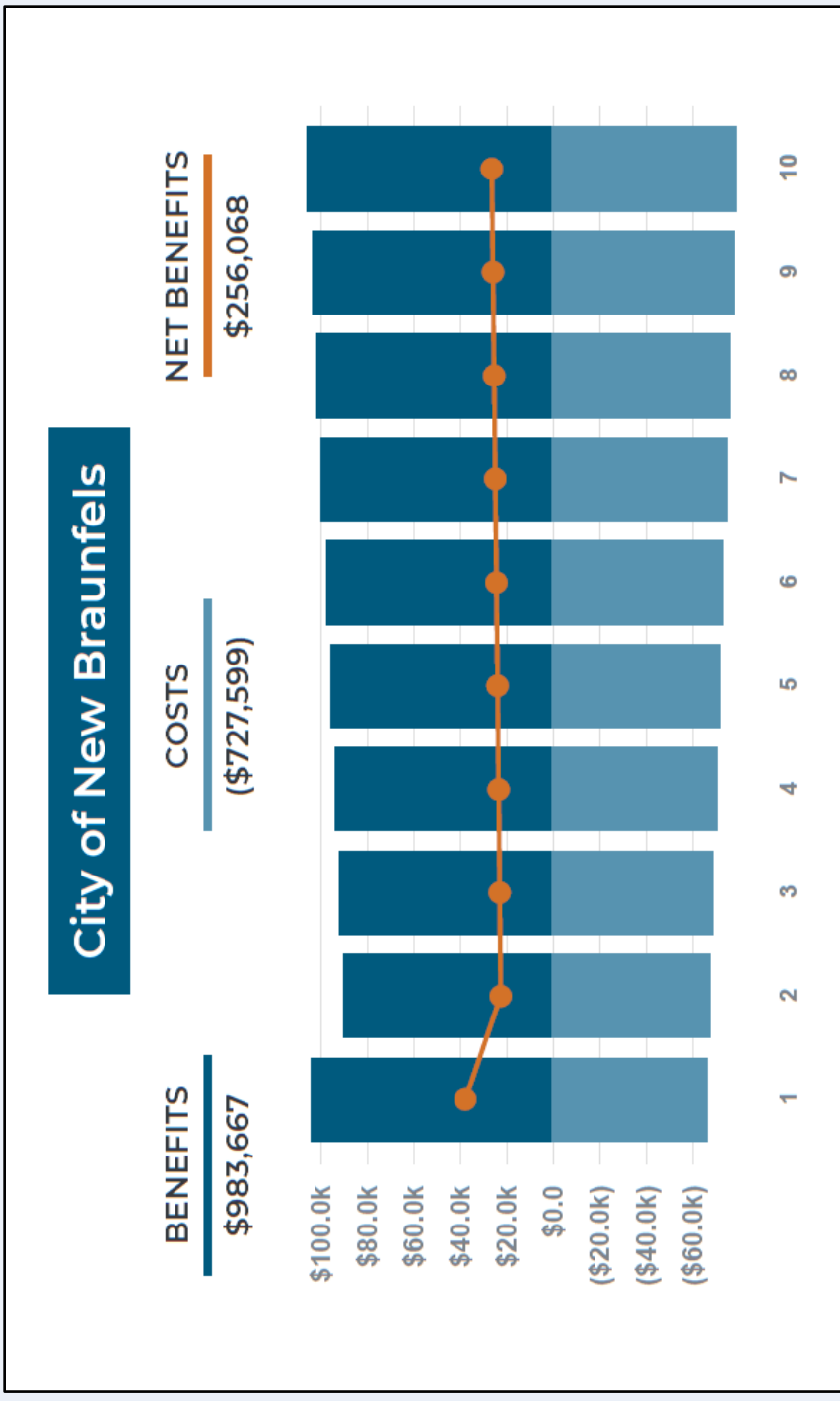
- **Guards against over-subsidizing projects**
- Demonstrates judicious use of incentive
- Helps articulate the case for (or against) use of TIF for a project

# Types of Information Requested in Application

- Development proformas
- Development budgets
- Lender and equity term sheets
- Market analysis
- Financial statements
- Ownership interests

# Fiscal Impact Analysis

- Establishes the revenues and costs of the project to the taxing entities
- Helps determine whether the project will pay for itself through increased revenues
- Some benefits may not be directly quantifiable



# Population and Neighborhood Impacts

- TIF projects can exacerbate property value increases, compounding existing affordability issues and displacing residents
- Public policy can help avoid displacement and harness the increased values in area to power an area's revitalization
- Proactive planning to foster a mixed-income neighborhood can mitigate these impacts to residents
- Other policy tools such as Neighborhood Empowerment Zones (NEZ) can help cities provide tax and other incentives to achieve community and economic development goals in a particular area
  - Chapter 378 of Texas LGC
- Other community development objectives such as public spaces, parks and trails can also be pursued



# Policy Overview

- Purpose Statement
- Public Benefits
- Other Policy Considerations
- General Policy
- TIRZ Administration
- Interlocal Cooperation
- Qualifying Expenditures
- Application and Submittal Requirements



# QUESTIONS?

