

AGENDA
REGULAR CITY COUNCIL MEETING
RONALD C. BOWMAN CITY COUNCIL CHAMBERS
447 North Main Street
Boerne, TX 78006
February 13, 2024 – 6:00 PM

A quorum of the City Council will be present during the meeting at: 447 N Main, Boerne, TX 78006.

During the meeting, the City Council may meet in executive session, as to the posted subject matter of this City Council meeting, under these exceptions of Chapter 551 of the Texas Government Code; sections 551.071 (Consultation with Attorney), 551.072 (Deliberation Regarding Real Property), 551.073 (Deliberation Regarding Gifts), 551.074 (Personnel/Officers), 551.076 (Deliberation Regarding Security Devices), and Section 551.087 (Deliberation Regarding Economic Development Negotiations).

1. CALL TO ORDER – 6:00 PM

INVOCATION

PLEDGE OF ALLEGIANCE TO THE UNITED STATES FLAG

PLEDGE OF ALLEGIANCE TO THE TEXAS FLAG

(Honor the Texas flag, I pledge allegiance to thee, Texas – one state under God, one and indivisible.)

2. CONFLICTS OF INTEREST

3. PUBLIC COMMENTS: This is the opportunity for visitors and guests to address the City Council on any issue, in compliance with LGC Section 551.007. City Council may not discuss any presented issue, nor may any action be taken on any issue at this time. (Attorney General opinion – JC-0169)

4. CONSENT AGENDA: All items listed below within the Consent Agenda are considered to be routine by the City Council and may be enacted with one motion. There will be no separate discussion of items unless a Council Member or citizen so requests, in which event the item may be moved to the general order of business and considered in its normal sequence.

- A. [2024-077](#) CONSIDER APPROVAL OF THE MINUTES OF THE REGULAR CALLED CITY COUNCIL MEETING OF JANUARY 23, 2024, AND THE SPECIAL CALLED MEETING (WINTER WORKSHOP) ON FEBRUARY

1, 2024.

Attachments: [Minutes.24.0123](#)
[Minutes.24.0201](#)

- B. [2024-078](#) CONSIDER MAYORAL APPOINTMENTS TO THE VISIT BOERNE ADVISORY BOARD.

Attachments: [AIS mayoral appt VB](#)

- C. [2024-079](#) CONSIDER ON SECOND READING ORDINANCE NO. 2024-03; AMENDING ORDINANCE NO. 2023-25 CAPTIONED "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE CITY OF BOERNE, TEXAS, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE, AND APPROPRIATING THE VARIOUS AMOUNTS THEREOF." (Amend Budget for fiscal year 2023-2024 to include two donations: \$50,000.00 to the animal control shelter and \$48,038.00 to Parks & Recreation Department for playground equipment)

Attachments: [AIS Budget Amendment - Parks and AC Donations](#)
[Ordinance No. 2024-03](#)
[AC and Parks Donations Budget Amendment](#)

- D. [2024-056](#) CONSIDER RESOLUTION NO. 2024-R09; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE A FIVE-YEAR AGREEMENT BETWEEN THE CITY OF BOERNE AND FLOCK GROUP, INC. FOR FLOCK SERVICE FOR AN AMOUNT NOT TO EXCEED \$225,000.00.

Attachments: [AIS Flock Safety Feb 13 2024](#)
[Resolution No. 2024-R09](#)
[Boerne PD - Law Enforcement Agreement.FINAL](#)
[Boerne PD - Exhibit A.Law Enforcement Agreement -FINAL](#)
[Flock Safety Sole Source Ltr](#)
[Flock FAQs](#)
[Flock Safety ALPR Privacy and Ethics](#)

REGULAR AGENDA:

5. RESOLUTIONS:

- A. [2024-043](#) RECEIVE PROPOSALS FOR WATER METER AND GAS MODULE REPLACEMENT CONTRACT AND CONSIDER RESOLUTION NO. 2024-R10; A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, AWARDED THE CONTRACT FOR WATER METER AND GAS MODULE REPLACEMENT TO _____ FOR AN AMOUNT NOT TO EXCEED \$_____; AND AUTHORIZING THE CITY MANAGER TO MANAGE AND EXECUTE THE RELATED CONTRACT.

Attachments: [AIS meter update project approval](#)
[Resolution No. 2024-R10](#)
[Countersigned CITY OF BOERNE WATER METER INSTALLATION AGREEMENT](#)

- B. [2024-082](#) CONSIDER RESOLUTION NO. 2024-R11; A RESOLUTION TO RATIFY THE EXECUTION OF CHANGE ORDER NO. 5 TO THE AGREEMENT BETWEEN THE CITY OF BOERNE AND AGAVE DESIGN STUDIO, LLC FOR THE COMPLETION OF THE RIVER ROAD PARK BANK STABILIZATION PROJECT FOR AN ADDITIONAL AMOUNT NOT TO EXCEED \$92,000.00.

Attachments: [AIS River Road Bank Stabilization Agave Design Studio](#)
[Resolution No. 2024-R11](#)
[Resolution No. 2023-R60 Awarding contract to Agave Design Studio, LLC](#)
[Change Orders #1 #5- Agave Studio River Road Bank Stabilization](#)

6. CITY MANAGER'S REPORT:

- A. [2024-083](#) UDC UPDATE.
- B. [2024-084](#) ONE WATER UPDATE.

7. COMMENTS FROM COUNCIL – No discussion or action may take place.

8. ADJOURNMENT

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the 9th day of
February, 2024 at 3:00 p.m.

s/s Lori A. Carroll
City Secretary

NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS

The City Hall is wheelchair accessible. Access to the building and special parking is available at the northeast entrance of the building. Requests for auxiliary aides and special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 830-249-9511.

Pursuant to Section 30.06 Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Pursuant to section 30.07 Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

MINUTES
REGULAR CITY COUNCIL MEETING
RONALD C. BOWMAN CITY COUNCIL CHAMBERS
447 North Main Street
Boerne, TX 78006
January 23, 2024 – 6:00 PM

Minutes of the Regular Called City Council Meeting of January 23, 2004.

Present: 5 - Mayor Frank Ritchie, Mayor Pro Tem Ty Wolosin, Council Member Sharon D. Wright, Council Member Bret A. Bunker, and Council Member Joseph Macaluso

Absent: 1 - Council Member Quinten Scott

Staff Present: Ben Thatcher, Siria Arreola, Sarah Buckelew, Jeff Carroll, Lori Carroll, Nathan Crane, Lissette Jimenez, Mike Mann, Mick McKamie, Steve Perez, Mike Raute, Chris Shadrock, Kristy Stark, and Danny Zincke.

Recognized/Registered Guests: Joe Bateman, Ben Eldredge, Andrew Sengler, Robert Perkins, Roberta Perkins, Jim Holton, Pamela Hodges, Pat Gessley, Wyatt Koch, and Mike R.

1. CALL TO ORDER – 6:00 PM

Mayor Ritchie called the City Council to order at 6:00 p.m.

Mayor Ritchie provided the Invocation and led the Pledge of Allegiance to the United States Flag and to the Texas Flag.

2. CONFLICTS OF INTEREST

No conflicts were declared.

3. PUBLIC COMMENTS:

Andrew Sengler, 234 State Hwy 46 East spoke regarding the ETJ Interlocal Agreement with Kendall County.

Robert Perkins, 143 Cinnamon Creek expressed concerns regarding the natural gas supply issues in his neighborhood.

Ben Eldredge - 202 Shane Lane stated that he is the Executive Director of the Cibolo Conservancy and also on the Cow Creek Groundwater District Board of Directors. He spoke regarding the ETJ Interlocal Agreement.

4. CONSENT AGENDA:

A MOTION WAS MADE BY MAYOR PRO TEM WOLOSIN, SECONDED BY COUNCIL MEMBER BUNKER, TO APPROVE THE CONSENT AGENDA AS PRESENTED. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 4 - Mayor Pro Tem Wolosin, Council Member Wright, Council Member Bunker, and Council Member Macaluso

A. CONSIDER APPROVAL OF THE MINUTES OF THE CITY COUNCIL MEETING OF JANUARY 9, 2024.

THE MINUTES WERE APPROVED.

B. CONSIDER ON SECOND READING ORDINANCE NO. 2024-01; AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF BOERNE UNIFIED DEVELOPMENT CODE, BY AMENDING CHAPTER 3. ZONING, SECTION 3.2, ZONING MAP, GRANTING A SPECIAL USE PERMIT FOR AUTOMOBILE SALES TO 10.47 ACRES LOCATED AT 31905 INTERSTATE HIGHWAY 10 WEST (A10097 - SURVEY 170 A CRUZ, KAD NOS. 48805 AND 12233) IN A C3-EC, COMMUNITY COMMERCIAL ENTRANCE CORRIDOR OVERLAY DISTRICT AND A C4-EC, REGIONAL COMMERCIAL ENTRANCE CORRIDOR OVERLAY DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERANCE CLAUSE; AND DECLARING AN EFFECTIVE DATE. (Consider on second reading an ordinance granting a special use permit for automobile sales at 31905 IH 10 W, at the request of K & C Holding LLC)

THE ORDINANCE WAS APPROVED.

C. CONSIDER ON SECOND READING ORDINANCE NO. 2024-02; AN

ORDINANCE AMENDING ORDINANCE NO. 2023-25, CAPTIONED "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE CITY OF BOERNE, TEXAS, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE; AND APPROPRIATING THE VARIOUS AMOUNTS THEREOF". (Consider on second reading an ordinance to amend FY 23-24 Budget for emergency W. Theissen Culvert repair)

THE ORDINANCE WAS APPROVED.

REGULAR AGENDA:

5. RESOLUTIONS:

- A. CONSIDER RESOLUTION NO. 2024-R06; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN AGREEMENT BETWEEN THE CITY OF BOERNE AND HALFF, INC. FOR A CONCEPTUAL CORRIDOR STUDY OF OLD SAN ANTONIO ROAD FOR AN AMOUNT NOT TO EXCEED \$60,000.00.

Mayor Ritchie called on Mr. Jeff Carroll, Engineering and Mobility Director. Mr. Carroll stated that the corridor study for Old San Antonio Road is described in the Major Thoroughfare Plan and also on the Kendall County Boerne Fair Oaks Ranch transportation report. Discussion ensued regarding funding.

A MOTION WAS MADE BY COUNCIL MEMBER MACALUSO, SECONDED BY COUNCIL MEMBER BUNKER, TO APPROVE RESOLUTION NO. 2024-R06; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN AGREEMENT BETWEEN THE CITY OF BOERNE AND HALFF, INC. FOR A CONCEPTUAL CORRIDOR STUDY OF OLD SAN ANTONIO ROAD FOR AN AMOUNT NOT TO EXCEED \$60,000.00. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 4 - Mayor Pro Tem Wolosin, Council Member Wright, Council Member Bunker, and Council Member Macaluso

- B. CONSIDER RESOLUTION NO. 2024-R07; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN AGREEMENT BETWEEN THE CITY OF BOERNE AND HALFF, INC.

FOR A CONCEPTUAL CORRIDOR STUDY OF SCHOOL STREET FOR AN AMOUNT NOT TO EXCEED \$90,000.00.

Mr. Carroll continued with a corridor study of School Street. He stated that School Street is one of the oldest roads in Boerne. The study will be from IH-10 to Main Street. School Street was identified in the Kendall County Boerne Fair Oaks Ranch transportation report.

A MOTION WAS MADE BY MAYOR PRO TEM WOLOSIN, SECONDED BY COUNCIL MEMBER MACALUSO, TO APPROVE RESOLUTION NO. 2024-R07; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN AGREEMENT BETWEEN THE CITY OF BOERNE AND HALFF, INC. FOR A CONCEPTUAL CORRIDOR STUDY OF SCHOOL STREET FOR AN AMOUNT NOT TO EXCEED \$90,000.00. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 4 - Mayor Pro Tem Wolosin, Council Member Wright, Council Member Bunker, and Council Member Macaluso

C. CONSIDER RESOLUTION NO. 2024-R08; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN AGREEMENT BETWEEN THE CITY OF BOERNE AND KIMLEY-HORN FOR AN ADA TRANSITION PLAN PHASE 3 FOR AN AMOUNT NOT TO EXCEED \$75,000.00.

Mr. Carroll continued with the proposed agreement with Kimley-Horn for an ADA Transition Plan, phase 3. Mr. Carroll explained that an ADA Transition Plan is a federal requirement.

A MOTION WAS MADE BY COUNCIL MEMBER MACALUSO, SECONDED BY MAYOR PRO TEM WOLOSIN, TO APPROVE RESOLUTION NO. 2024-R08; A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE AN AGREEMENT BETWEEN THE CITY OF BOERNE AND KIMLEY-HORN FOR AN ADA TRANSITION PLAN PHASE 3 FOR AN AMOUNT NOT TO EXCEED \$75,000.00. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 4 - Mayor Pro Tem Wolosin, Council Member Wright, Council Member Bunker, and Council Member Macaluso

6. PRESENTATIONS, PUBLIC HEARINGS, AND ORDINANCES:

- A. **CONSIDER ON FIRST READING ORDINANCE NO. 2024-03; AMENDING ORDINANCE NO. 2023-25 CAPTIONED "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE CITY OF BOERNE, TEXAS, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE, AND APPROPRIATING THE VARIOUS AMOUNTS THEREOF." (Amend Budget for fiscal year 2023-2024 to include two donations: \$50,000.00 to the animal control shelter and \$48,038.00 to Parks & Recreation Department for playground equipment)**

Mayor Ritchie called on Ms. Sarah Buckelew, Finance Director. Ms. Buckelew stated that the city recently received two donations, a donation in the amount of \$50,000.00 to be used at the animal shelter and the second donation in the amount \$48,038.00 for playground equipment to be located behind the Patrick Heath Public Library. A budget amendment is necessary to authorize both transactions.

A MOTION WAS MADE BY MAYOR PRO TEM WOLOSIN, SECONDED BY COUNCIL MEMBER WRIGHT, TO APPROVE ON FIRST READING ORDINANCE NO. 2024-03; AMENDING ORDINANCE NO. 2023-25 CAPTIONED "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE CITY OF BOERNE, TEXAS, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE, AND APPROPRIATING THE VARIOUS AMOUNTS THEREOF." (AMEND BUDGET FOR FISCAL YEAR 2023-2024 TO INCLUDE TWO DONATIONS: \$50,000.00 TO THE ANIMAL CONTROL SHELTER AND \$48,038.00 TO PARKS & RECREATION DEPARTMENT FOR PLAYGROUND EQUIPMENT). THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 4 - Mayor Pro Tem Wolosin, Council Member Wright, Council Member Bunker, and Council Member Macaluso

7. OTHER:

- A. **RECEIVE AND APPROVE THE FIRST QUARTER FINANCIAL AND INVESTMENT REPORTS FOR FISCAL YEAR 2023-2024.**

Ms. Buckelew continued with a review of the First Quarter Financial and Investment Report. She stated all funds are on track and there are no concerns. She mentioned that the sales tax revenue report does not include the Dickens on Main event. Discussion ensued regarding the declining permit revenue.

A MOTION WAS MADE BY MAYOR PRO TEM WOLOSIN, SECONDED BY COUNCIL MEMBER WRIGHT, TO RECEIVE AND APPROVE THE FIRST QUARTER FINANCIAL AND INVESTMENT REPORTS FOR FISCAL YEAR 2023-2024. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 4 - Mayor Pro Tem Wolosin, Council Member Wright, Council Member Bunker, and Council Member Macaluso

B. RECEIVE AND CONSIDER AMENDMENTS TO THE UTILITIES RULES AND REGULATIONS REGARDING CHANGES IN PROCEDURES, PROGRAMS AND SERVICES AVAILABLE.

Ms. Buckelew continued with a review of the proposed changes to the city's Utilities Rules and Regulations.

A MOTION WAS MADE BY MAYOR PRO TEM WOLOSIN, SECONDED BY COUNCIL MEMBER BUNKER, TO RECEIVE AND CONSIDER AMENDMENTS TO THE UTILITIES RULES AND REGULATIONS REGARDING CHANGES IN PROCEDURES, PROGRAMS AND SERVICES AVAILABLE. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Yeah: 4 - Mayor Pro Tem Wolosin, Council Member Wright, Council Member Bunker, and Council Member Macaluso

C. PUBLIC HEARING AND CONSIDER AN APPEAL OF A VESTED RIGHTS DETERMINATION OF THE CITY MANAGER FOR THE PROPERTY AT 227 WANDA STREET. (Public hearing and consideration postponed at the request of the property owner until a future meeting date.)

No discussion, public hearing or consideration of the appeal took place as the applicant requested the public hearing and consideration of the appeal to be postponed until the February 27, 2024 City Council meeting.

8. CITY MANAGER'S REPORT:**A. RECOGNITION OF CITY SECRETARY LORI CARROLL AND DEPUTY CITY SECRETARY SIRIA ARREOLA RECEIVING RE-CERTIFICATION OF TEXAS MUNICIPAL CLERKS CERTIFICATION PROGRAM.**

City Manager Ben Thatcher recognized Lori Carroll and Siria Arreola on their city secretary re-certification. Mr. Thatcher highlighted the requirements of becoming a registered city secretary.

B. WINTER WEATHER RESPONSE.

City Manager Thatcher recognized staff on the response during the recent winter weather. He expressed appreciation to the dedication of workforce.

C. PROJECTS UPDATE.

City Manager Thatcher continued with an update on current city projects.

9. COMMENTS FROM COUNCIL – No discussion or action may take place.

Council Member Wright stated she was proud of the response from the City of Boerne staff during the winter weather event to include Communication Director Shadrock's use of social media and staff's decision to open warming centers.

10. EXECUTIVE SESSION IN ACCORDANCE WITH THE TEXAS GOVERNMENT CODE:

Mayor Ritchie convened the City Council into Executive Session at 6:43 p.m.

A. SECTION 551.071 - CONSULTATION WITH CITY ATTORNEY TO DISCUSS THE INTERLOCAL AGREEMENT FOR REGULATION OF SUBDIVISION PLATS IN THE ETJ BETWEEN THE CITY OF BOERNE AND KENDALL COUNTY.

No action was taken.

11. RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE.

Mayor Ritchie reconvened the City Council into Open session at 7:45 p.m.

No action was taken.

12. ADJOURNMENT

Mayor Ritchie adjourned the City Council Meeting at 7:45 p.m.

Approved:

Mayor

Attest:

City Secretary

MINUTES
SPECIAL CALLED CITY COUNCIL MEETING
CITY COUNCIL WINTER WORKSHOP
TRAINING ROOM
447 N Main
Boerne, TX 78006
February 1, 2024 – 6:00 PM

Minutes of the Special Called City Council Meeting of February 1, 2024.

Present: Mayor Frank Ritchie, Mayor Pro Tem Ty Wolosin, Council Member Sharon Wright, Council Member Quinten Scott, Council Member Bret Bunker, and Council Member Joseph Macaluso.

Staff Present: Ben Thatcher, Sarah Buckelew, Jeff Carroll, Lori Carroll, Nathan Crane, Susan Finch, Lissette Jimenez, Mike Mann, Nick Montagno, Steve Perez, Mike Raute, Kelly Skovbjerg, Kristy Stark, Larry Woods, and Danny Zincke.

Recognized/Registered Guests: Richard Chapman and Donna Sharp

1. CALL TO ORDER – 6:00 PM

Mayor Ritchie called the City Council meeting to order at 6:00 p.m.

Mayor Ritchie provided the Invocation and led the Pledge of Allegiance to the United States Flag and to the Texas Flag.

2. PUBLIC COMMENTS:

No comments were received.

3. WELCOME & AGENDA INTRODUCTION

Mayor Ritchie called on City Manager Ben Thatcher. Mr. Thatcher stated that as part of the special meeting, new strategic priorities of projects will be highlighted as well as the 10-year Rolling Plan and the upcoming budget process.

4. DISCUSSION OF 10-YEAR ROLLING PLAN

Mayor Ritchie called Mr. Nick Montagno, Operation Manager to discuss the 10-year Rolling Plan. Mr. Montagno provided the objectives and initiatives of the plan. It is anticipated that the 10-year plan will be brought to City Council in February for consideration. Discussion ensued regarding the importance of prioritization.

5. DISCUSSION OF CURRENT CITY STRATEGY MAP

City Manager Thatcher reviewed the current City Strategy Map which was added last year. He stated that there was a need for a stronger alignment for budget planning. This is one of the most fundamental policy documents derived from our mission statement and values statement.

6. DISCUSSION OF 2023 PROOF OF PERFORMANCE

City Manager Thatcher excused staff to their places in the City Hall lobby. At 6:21 p.m. City Council Members were asked to proceed in groups of two's to a table in the lobby. Each staff member will provide the highlights of what was accomplished in their department last year and expectations for this year. This is an opportunity for one on one discussion with the department heads. Discussions will be timed for 10 to 15 minutes at which time Lori Carroll, City Secretary will ask Council Members to rotate to another table. Once the Council Members completed rotation to each table, Council Members proceeded to their places in the Training Room at 7:44 p.m.

7. DISCUSSION OF UPCOMING BUDGET PROCESS

Ms. Sarah Buckelew, Finance Director provided the timeline for the budget and tax rate process. She discussed the strategic focus for establishing the budget, how the budget is structured, and information that will affect the budget and tax rate. Ms. Buckelew announced that the City was awarded the GFOA Budget Award for the first time for financial excellence. Discussion ensued regarding transparency in the budget process.

8. COMMENTS FROM COUNCIL – No discussion or action may take place.

Mayor Ritchie expressed appreciation to staff for the informative meeting.

9. ADJOURNMENT

Mayor Ritchie adjourned the City Council Meeting at 7:55 p.m.

Approved:

Mayor

Attest:

City Secretary



AGENDA ITEM SUMMARY

Agenda Date	February 13, 2024
Requested Action	CONSIDER MAYORAL APPOINTMENTS TO THE VISIT BOERNE ADVISORY BOARD.
Contact Person	Frank Ritchie, Mayor Lori Carroll, City Secretary
Background Information	<p>The Visit Boerne Advisory Board, Business District Representative requires a member to own, operate, manage, or control a business in the business district. It was brought to our attention that Brandon Phillips no longer owns or manages a business in Boerne, therefore not eligible to be on the Visit Boerne Advisory Board.</p> <p>It is Mayor Ritchie's recommendation that Emily Carvalho, owner of The Christmas Shoppe fill the unexpired vacancy.</p> <p>It is also Mayor Ritchie's recommendation to move Tommy Mathews to the Vice Chair position which was held by Brandon Phillips.</p>
Item Justification	<div> <input type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Infrastructure Investment </div> <div> <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Customer Pull </div> <div> <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Service Enhancement </div> <div> <input type="checkbox"/> Mitigate Risk <input type="checkbox"/> Process Efficiency </div> <div> <input type="checkbox"/> Master Plan Recommendation <input checked="" type="checkbox"/> Other: <u>Mayoral Appt</u> </div>
Strategic Alignment	C3- Collaborating with community partners to enhance quality of life.
Financial Considerations	
Citizen Input/Board Review	
Legal Review	
Alternative Options	

Supporting Documents	
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AGENDA ITEM SUMMARY

Agenda Date	February 13, 2024
Requested Action	CONSIDER ON SECOND READING ORDINANCE NO. 2024-03; AMENDING ORDINANCE NO. 2023-25 CAPTIONED “AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE CITY OF BOERNE, TEXAS, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE, AND APPROPRIATING THE VARIOUS AMOUNTS THEREOF.” <i>(Amend Budget for fiscal year 2023-2024 to include two donations: \$50,000.00 to the animal control shelter and \$48,038.00 to Parks & Recreation Department for playground equipment)</i>
Contact Person	Sarah Buckelew, Finance Director
Background Information	<p>The City of Boerne recently received two generous donations: \$50,000 to the Animal Shelter and \$48,038 to the Parks Department.</p> <p>The donation received by the parks department was made in honor of Michael Gabaourie to be used for a new playground located behind the library. Parks will contract with the Play Well Group Inc., a locally owned playground company, to purchase and install this playground. The donation received by the Animal Shelter was made by a donor who wishes to remain anonymous. These funds will be transferred to the fund balance. A budget amendment is required to authorize both transactions.</p> <p>Section 6.04 of the City of Boerne Home Rule Charter stipulates that City Council has the authority to authorize a budget amendment after a fiscal year budget has been adopted to account for supplemental appropriations during the year. This ordinance will satisfy that requirement.</p>
Item Justification	<div> <input checked="" type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Infrastructure Investment </div> <div> <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Customer Pull </div> <div> <input checked="" type="checkbox"/> Increase Revenue <input type="checkbox"/> Service Enhancement </div> <div> <input type="checkbox"/> Mitigate Risk <input type="checkbox"/> Process Efficiency </div> <div> <input type="checkbox"/> Master Plan Recommendation <input type="checkbox"/> Other: </div>

Strategic Alignment (Example: C2 – Customer Feedback, B1 – Data Driven Decision)	F2, F1
Financial Considerations	Proposed Budget Amendment is included with the attached ordinance.
Citizen Input/Board Review	N/A
Legal Review	N/A
Alternative Options	N/A
Supporting Documents	Ordinance

ORDINANCE NO. 2024-03

AN ORDINANCE AMENDING ORDINANCE NO. 2023-25, CAPTIONED “AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE CITY OF BOERNE, TEXAS, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE; AND APPROPRIATING THE VARIOUS AMOUNTS THEREOF”

WHEREAS, in September 2023, the City Council adopted the City of Boerne’s Fiscal Year 2023-2024 Annual Capital and Operating Budget for the period commencing October 1, 2023, and ending September 30, 2024 (“the Budget”), by Ordinance No. 2023-25; and

WHEREAS, Section 6.04 of the Boerne City Charter allows amendments after the adoption of the budget for the purpose of supplemental appropriations of excess revenues, emergency appropriations where life, health, property or the public peace are affected by a public emergency, reduction of appropriations, or transfer of unencumbered appropriations; and

WHEREAS, since the adoption of the Budget, the City of Boerne has received two generous donations; and

WHEREAS, the Animal Control Department received a \$50,000.00 donation to be used for the animal shelter donated by an anonymous donor; and

WHEREAS, the Parks and Recreation Department received a \$48,038.00 donation from Make Kids Smile, Inc. in memory of Michael Gabaourie to be used towards the construction of a playground; and

WHEREAS, City Council now finds it necessary to amend the Budget and Ordinance No. 2023-25 in order to correctly reflect each of these Budget Adjustments;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

SECTION 1. The City of Boerne Fiscal Year 2023-2024 Annual Budget for the fiscal year commencing October 1, 2023, and ending September 30, 2024, and its adopting Ordinance, No. 2023-25, are hereby amended to incorporate the Budget Adjustments attached hereto and incorporated herein as Attachment I.

SECTION 2. All ordinances and resolutions, or parts of ordinances and resolutions, in conflict with this ordinance are hereby repealed, and are no longer of any force and effect.

SECTION 4. The City Manager shall cause the 2023-2024 budget documents to be revised in accordance with this ordinance, and shall file such documents with the City Secretary.

SECTION 5. This ordinance will take effect upon the second and final reading of same.

PASSED AND APPROVED on this the first reading the 23rd day of January, 2024.

PASSED, APPROVED AND ADOPTED on this the second reading the ____ day of February, 2024.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

CITY OF BOERNE
BUDGET ADJUSTMENT SUMMARY
FISCAL YEAR 2023-24

Revenue Increases

Park Donations Revenue	\$ 48,038
Animal Control Donations Revenue	\$ 50,000

Increases in Expenditures

Parks Capital Outlay	\$ 48,038
Transfer to Fund Balance - Assigned for Animal Shelter	\$ 50,000



AGENDA ITEM SUMMARY

Agenda Date	FEBRUARY 13, 2024
Requested Action	APPROVE RESOLUTION NO. 2024-R09; AUTHORIZING THE CITY MANAGER TO ENTER INTO AND MANAGE A 5 YEAR AGREEMENT BETWEEN THE CITY OF BOERNE AND FLOCK GROUP INC. FOR FLOCK SERVICE FOR AN AMOUNT NOT TO EXCEED \$225,000.00.
Contact Person	Steve Perez Chief of Police Mike Raute, IT Director
Background Information	<p>Last year we came before City Council and brought forth an emerging technology in public safety cameras.</p> <p>As you may or may not know, for several years now, the city has installed public safety cameras, also known as surveillance cameras, at several locations throughout town. These cameras are installed for the purpose of enhancing public safety and security. The cameras are not used for issuing traffic violations of any kind, but only to monitor activity in areas around the city. The installation of the public safety cameras also takes a lot of collaboration and time between the IT, Police, and Electric departments.</p> <p>The primary purpose of public safety cameras is to deter criminal activity by creating a visible presence of law enforcement and providing evidence in case of crimes. The cameras are also used to monitor traffic and respond to emergencies and have proven to be helpful to the Boerne Police Department and for engineering and mobility studies.</p> <p>City Council last year approved the expansion to the public safety camera system by adding automated license plate reader software (Flock OS) and cameras (Falcon LPR) to the current public safety camera system, by adding Automatic License Plate Recognition (ALPR) cameras and software which has proven to provide several benefits to the city.</p> <p>ALPR systems automate the process of reading license plates, reducing the need for manual checks and allowing law enforcement agencies to process more information in less time. This can free up officers to focus on other tasks and improve overall efficiency.</p> <p>ALPR systems provide real-time alerts to law enforcement agencies</p>

	<p>when a vehicle of interest is identified, allowing officers to respond quickly and effectively to potential threats or criminal activity. ALPR systems enhance public safety, helping law enforcement agencies to identify and locate stolen vehicles, wanted suspects, and vehicles associated with criminal activity. It will also assist in identifying vehicles that are involved in Amber Alerts or other emergency situations.</p> <p>ALPR systems can be used to identify and track the movements of vehicles involved in criminal activity, helping law enforcement agencies to prevent and solve crimes. This includes everything from vehicle theft to drug trafficking and can significantly improve the effectiveness of investigations.</p> <p>ALPR systems can help city officials to better understand traffic patterns, travel times, and other transportation-related data. This can inform city planning and infrastructure investments, leading to improved transportation systems and better quality of life for residents.</p> <p>The use of the public safety cameras used by Boerne Police Department has proper guidelines in place to ensure that the use of these cameras do not infringe on the right of citizens. ALPR does not include facial recognition capabilities and does not capture personally identifiable information (PII). ALPR cameras capture wholly objective images of vehicles and license plates, providing a clear and actionable investigative lead.</p> <p>Flock Safety presented Police and IT Staff with a desirable approach last year and began deploying ALPR cameras throughout the community. The Flock program is an all-inclusive model for deploying APLR cameras.</p> <p>Flock Safety is the sole manufacturer and developer of the Flock Safety Camera. Flock Safety is also the sole provider of comprehensive monitoring, processing, and machine vision services which integrate with the Flock Safety Camera. There are several other differences between Flock and other ALPR companies. Most notably they are the only manufacturer and service provider that leases ALPR services. Others require the city to purchase equipment. The technology is also different because it captures motion and not just license plates.</p> <p>Flock Safety provided an affordable, infrastructure-free automatic license plate reading (ALPR) camera system for cities who want to reduce crime within a principled framework. Unlike traditional ALPR, Flock uses Vehicle Fingerprint™ technology to transform hours of footage into a searchable database to find the single piece of evidence needed, even when a license plate isn't visible.</p>
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	<p>Flock Safety installed and continues maintaining these cameras. The cameras can be installed almost anywhere, with solar power and LTE connectivity. Which will free up time for several departments who install and maintain the cameras currently.</p> <p>Flock Safety has also provided camera system solutions for a couple Homeowners Associations in Boerne which help to enhance the security of their neighborhoods by making cameras available to be purchased by the HOA and monitored by the police department. Which continues the HOA program started by Boerne Police Department a few years ago.</p> <p>At this time, we are requesting to allow the City to enter into a new contract with Flock Safety for the LPR cameras and software, on a 5-year contract that will lock in the current pricing and not increase to the proposed increase when the current contract ends in March 2024.</p> <p>However, if in any of the five years we find that we cannot commit the funds in a future budget we can cancel the contract before entering another year of service. This provision is laid out in the contract under Section 11.16.</p> <p><u>Stats and other information from our Flock System:</u></p> <ul style="list-style-type: none"> • The city currently has 24 total cameras up and running (5 Fixed LPR's, 19 on Flock OS on current city cameras) • We have 7 more fixed cameras waiting for approval to be installed, and up to 31 more we can attach to current city cameras. • We currently have three HOA's who are in the process of purchasing Flock cameras and they are (Herff Ranch, Menger Springs, and Esperanza) • Since installing the system, we have had 5 Felony Takedowns from stolen vehicle Flock Hits • We have also received the following hits in the last 30 days: 2 Felony Warrants, 7 Gang Member, 6 Protection Order, 4 Sex Offender, 3 Stolen Plate, 5 stolen Vehicle, and 23 Warrants. <p>In the last 30 days our system has logged 768,651 plate reads. That being 146,442 unique plates (no duplicates). This is from our 24 cameras alone.</p> <p>We currently have access to a network of cameras in different areas of the state and country totaling 1596 total cameras. This number is growing weekly.</p>
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Item Justification	<div> <input type="checkbox"/> Legal/Regulatory Obligation <input checked="" type="checkbox"/> Infrastructure Investment </div> <div> <input checked="" type="checkbox"/> Reduce Costs <input type="checkbox"/> Customer Pull </div> <div> <input type="checkbox"/> Increase Revenue <input checked="" type="checkbox"/> Service Enhancement </div> <div> <input checked="" type="checkbox"/> Mitigate Risk <input type="checkbox"/> Process Efficiency </div> <div> <input type="checkbox"/> Master Plan Recommendation <input checked="" type="checkbox"/> Other: <u>PUBLIC SAFETY</u> <u>TRAFFIC MONITORING</u> </div>
Strategic Alignment	<div>Safety & Security</div> <div>Fiscal Excellence</div>
Financial Considerations	<div>All Items are approved and accounted for in the FY 23-24 budget.</div> <div>Falcon LPR cameras \$30,000.00 – 12 cameras and Flock camera operating system \$15,000.00 – Flock OS.</div> <div>This contract will lock the current pricing above for 5 years.</div>
Citizen Input/Board Review	N/A
Legal Review	TOASE has completed the review of the ALPR services agreement with Flock Safety
Alternative Options	Continue paying on one-year contracts and face cost to increase each year. Signing the contract locks pricing for the 12 cameras at \$2500.00 each and the OS at \$15,000.00 for Five years.
Supporting Documents	<div>Agenda Item Summary Flock Safety Feb 12 2024</div> <div>Boerne PD Flock Agreement</div> <div>Boerne PD Exhibit A – Proposal</div> <div>Flock Safety Sole Source Letter</div> <div>Flock FAQs</div> <div>Flock Safety ALPR Privacy and Ethics</div>

RESOLUTION NO. 2024-R09

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND
MANAGE A FIVE-YEAR AGREEMENT BETWEEN THE CITY OF BOERNE
AND FLOCK GROUP, INC. FOR FLOCK SERVICE FOR AN AMOUNT NOT TO
EXCEED \$225,000.00**

WHEREAS, the City of Boerne ("City") uses public safety cameras for the primary purpose of deterring criminal activity; and

WHEREAS, Flock Group, Inc. offers a software and hardware situational awareness solution for automatic license plates, video and audio detection through "Flock Service"; and

WHEREAS, the City currently utilizes Flock Service; and

WHEREAS, Flock Safety is the sole manufacturer and developer of the Flock Safety ALPR Camera and the sole provider of the comprehensive monitoring, processing, and machine vision services which integrate with the Flock Safety ALPR Camera; and

WHEREAS, the City would like to expand on the public safety camera system by adding additional hardware and software; and

WHEREAS, the City Council of Boerne finds it in the best interest of the citizens to enter into and manage an agreement with Flock Group Inc. for Flock Service.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
BOERNE, TEXAS:**

that the City Council hereby authorizes the City Manager to enter into and manage a five-year agreement with Flock Group Inc. for Flock Service for an amount not to exceed \$225,000.00.

PASSED and APPROVED on this the ____ day of February, 2024.

APPROVED:

Mayor Pro Tem

ATTEST:

City Secretary

Master Services Agreement

This Master Services Agreement (this “Agreement”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW, Suite 210, Atlanta, GA 30318 (“Flock”) and the City of Boerne, Texas (“Customer”) (each a “Party,” and collectively, the “Parties”). This Agreement is effective on the date of mutual execution (“Effective Date”). Parties will sign an Order Form (“Order Form”), which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and providing notifications to Customer (“Notifications”); and

WHEREAS, Customer desires access to the Flock Services (defined below) on existing devices provided by Customer or Flock provided Flock Hardware (as defined below) in order to create, view, search, and archive Footage (defined below) and receive Notifications, via the Flock Services; and

WHEREAS, Customer shall have access to the Footage in the Flock Services pursuant to Flock’s standard Retention Period (defined below). Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the Order Form. Customer shall be responsible for extracting, downloading, and archiving Footage from the Flock Services on its own storage devices; and

WHEREAS, Flock desires to provide Customer the Flock Services and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations, and evidence gathering for law enforcement purposes (“Permitted Purpose”).

AGREEMENT

NOW, THEREFORE, Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as exhibits and incorporated by reference, constitute the complete and exclusive statement of the agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications, and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “*Anonymized Data*” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards that

irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “*Authorized End User(s)*” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “*Customer Data*” means the data, media, and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. “*Customer Hardware*” means a third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “*Embedded Software*” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “*Flock Hardware*” means the Flock device(s), which may include the pole, clamps, solar panels, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “*Flock IP*” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage.

1.8 “*Flock Services or Services*” means the provision of Flock’s software and hardware situational awareness solution via the Web Interface for automatic license plate detection, alerts, audio detection, searching image records and video, and sharing Footage.

1.9 “*Footage*” means still images, video, audio, and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.10 “*Installation Services*” means the services provided by Flock for installation of Flock Services.

1.11 “*Retention Period*” means the time period that the Customer Data is stored within the cloud storage, as specified in the Order Form.

1.12 “*Web Interface*” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data Retention Period

defined on the Order Form. Authorized End Users will be required to sign up for an account and select a password and username (“User ID”). To the extent permitted by law, Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User, including any acts or omissions of an Authorized End User that would constitute a breach of this Agreement if undertaken by Customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 Embedded Software License. Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 Support Services. Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com.

2.4 Upgrades to Platform. Flock may make any upgrades to the system or platform that it deems necessary or useful to: (i) maintain or enhance (a) the quality or delivery of Flock’s products or services to its agencies; (b) the competitive strength of, or market for, Flock’s products or services; or (c) such platform or system’s cost efficiency or performance; or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

2.5 Service Interruption. Services may be interrupted in the event that: (a) Flock’s provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believes Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance (“Service Interruption”). Flock will provide written notice of any Service Interruption to Customer, provide updates regarding resumption of access to Services, and resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer’s direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

2.6 Service Suspension. Flock may temporarily suspend Customer and Authorized End User's access to any portion or all of the Flock IP or Flock Service if Flock reasonably determines that: (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer or Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or Authorized End User is using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("Service Suspension"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 Hazardous Conditions. Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, or toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately.

3. CUSTOMER OBLIGATIONS

3.1 Customer Obligations. Flock will assist Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate persons as Authorized End Users who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. To the extent permitted by law, Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this Agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access, or otherwise use the Flock Services. Customer shall, at its own expense, provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services.

3.2 Customer Representations and Warranties. Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

4. DATA USE AND LICENSING

4.1 Customer Data. As between Flock and Customer, all right, title, and interest in the Customer Data belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and

perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

4.2 Customer Generated Data. Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer (“Customer Generated Data”). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer’s intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 Anonymized Data. Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, each Party (the “Receiving Party”) understands that the other Party (the “Disclosing Party”) has disclosed or may disclose business, technical, or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information”). Proprietary Information of Flock includes non-public information regarding features, functionality, and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees to: (i) take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Receiving Party takes with its own proprietary information, but in no event less than commercially reasonable precautions; and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; (b) was in its possession or known by it prior to receipt from the Disclosing Party; (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, or as required by the Texas Public Information Act provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order or request for information. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of this Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that are considered trade secret(s) shall continue in perpetuity or until such information is no longer trade secret(s).

5.2 Usage Restrictions on Flock IP. Flock and its licensors retain all right, title, and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock’s sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse-engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with, or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer’s rights. There are no implied rights.

5.3 Disclosure of Footage. Subject to and during the Retention Period, Flock may access, use, preserve, and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation, or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent, or otherwise address security, privacy, fraud, technical issues, or emergency situations.

6. PAYMENT OF FEES

6.1 Billing and Payment of Fees. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its Services until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

6.2 Notice of Changes to Fees. Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice to the address provided for in this Agreement (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

6.3 Late Fees. If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.

6.4 Taxes. Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge customer any taxes from which it is exempt. If any deduction or withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

7. TERM AND TERMINATION

7.1 Term. The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "Term"). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "Renewal Term") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

7.2 Termination. Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period (“Cure Period”). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership, or bankruptcy proceedings; (ii) upon the other Party's making an assignment for the benefit of creditors; or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the Cure Period, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 Survival. The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 Manufacturer Defect. Upon a malfunction or failure of Flock Hardware or Embedded Software (a “Defect”), Customer must notify Flock’s . In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 Replacements. In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall provide advance notice in writing or by e-mail at the address provided in this Agreement of any scheduled service disruption.

8.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING,

BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 Insurance. Flock will maintain commercial general liability policies as stated in **Exhibit B**.

8.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions, acts of hackers or internet service providers, or any other third party acts or omissions.

9. LIMITATION OF LIABILITY; INDEMNITY

9.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; OR (B) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE. THIS LIMITATION OF LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 11.6. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 Responsibility. To the extent permitted by law, each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 Flock Indemnity. Flock shall indemnify and hold harmless Customer, its agents, officers, and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device, or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers, or employees.

10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 Ownership of Hardware. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust, or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts that would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, and fail to cure within thirty (30) days as provided by Section 6, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

10.2 Deployment Plan. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("Deployment Plan"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

10.3 Changes to Deployment Plan. After installation of Flock Hardware, any subsequent changes requested by Customer to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, or changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

10.4 Customer Installation Obligations. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("Customer Obligations"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right, title, and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 Flock's Obligations. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this Agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

11. MISCELLANEOUS

11.1 Compliance with Laws. Parties shall comply with all applicable local, state, and federal laws, regulations, policies, and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 Assignment. This Agreement is not assignable, transferable, or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation, or similar transaction. However, in the event of such assignment, the other Party may terminate this Agreement by providing thirty (30) days' written notice.

11.4 Entire Agreement. This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any exhibits attached hereto are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications, and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations, or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities, and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

11.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and the Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

11.6 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Texas. The Parties hereto agree that venue would be proper in the chosen state or federal courts in Kendall County, Texas. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 Special Terms. Flock may offer certain special terms that are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual

execution by authorized representatives (“Special Terms”). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 Publicity. Flock has the right to reference and use Customer’s name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

11.9 Feedback. If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations, or other information relating to the subject matter hereunder, Customer or Authorized End User hereby assigns to Flock all right, title, and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 Export. Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws, or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation (“FAR”), Section 2.101, the Services, the Flock Hardware, and Documentation are “commercial items” and according to the Department of Defense Federal Acquisition Regulation (“DFAR”) Section 252.2277014(a)(1) and are deemed to be “commercial computer software” and “commercial computer software documentation.” Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR Section 227.7202 and FAR Section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 Headings. The headings in this Agreement are merely for organization and should not be construed as adding meaning to this Agreement or interpreting the associated sections.

11.12 Authority. Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 Conflict. In the event there is a conflict between this Agreement and any applicable statement of work or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 Morality. In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude, or similar event that would negatively impact or tarnish Flock’s reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically

confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210
ATLANTA, GA 30318
ATTN: LEGAL DEPARTMENT
EMAIL: legal@flocksafety.com

CUSTOMER NOTICES ADDRESS:

ADDRESS: _____

ATTN: _____

EMAIL: _____

11.16 Non-Appropriation. Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement that require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non-appropriation with thirty (30) days written notice without penalty or other cost.

11.17 Additional Verifications. To the extent required by Texas law, Flock verifies that: (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of this Agreement discriminate against a firearm entity or firearm trade association; (2) it does not “boycott Israel” as that term is defined in Texas Government Code § 808.001 and it will not boycott Israel during the term of this Agreement; (3) it does not “boycott energy companies,” as those terms are defined in Texas Government Code §§ 809.001 and 2274.001, and it will not boycott energy companies during the term of this Agreement; (4) it does not do business with Iran, Sudan, or a foreign terrorist organization, as defined in Texas Government Code Chapter 2270; and (5) it does not operate as a foreign owned or controlled company in connection with a critical infrastructure project as defined in Texas Government Code Chapter 2275.

11.18 Non-Collusion. Flock represents and warrants that Flock has not given, made, promised, or paid, nor offered to give, make, promise, or pay any gift, bonus, commission, money, or other consideration prohibited by law to any person as an inducement to obtain the Services to be provided to the Customer under this Agreement.

11.19 Non-Discrimination. To the extent required by law, Flock and the Flock’s subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Flock shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Flock agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies as required by law.

11.20 **Governmental Immunities.** Flock acknowledges and agrees that Customer is a political subdivision of the State of Texas, and Customer is entering into this Agreement pursuant to its governmental functions and is immune from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Customer does not waive any of its immunities from suit or liability, except as expressly waived by statute under Texas Local Gov't Code Ch. 271.

EXHIBIT B

INSURANCE

Required Coverage. Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than “A” and “VII.” Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of this Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable state law for all Flock employees.

Types and Amounts Required. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and
- (v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

Flock Safety + TX - City of Boerne

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Amanda Spees
amanda.spees@flocksafety.com
(470) 763-2071



EXHIBIT A
ORDER FORM

Customer: TX - City of Boerne
Legal Entity Name: TX - City of Boerne
Accounts Payable Email: tedmiston@boerne-tx.gov
Address: 124 Old San Antonio Rd Boerne, Texas 78006

Initial Term: 60 Months
Renewal Term: 24 Months
Payment Terms: Net 30
Billing Frequency: Annual - First Year at Signing.
Retention Period: 30 Days

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$45,000.00
Flock Safety Flock OS			
FlockOS™	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon®	Included	12	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			

Subtotal Year 1:	\$45,000.00
Annual Recurring Subtotal:	\$45,000.00
Discounts:	\$30,000.00
Estimated Tax:	\$0.00
Contract Total:	\$225,000.00

*Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "**Renewal Term**") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At Contract Signing	\$45,000.00
Annual Recurring after Year 1	\$45,000.00
Contract Total	\$225,000.00

*Tax not included

Discounts

Discounts Applied	Amount (USD)
Flock Safety Platform	\$30,000.00
Flock Safety Add-ons	\$0.00
Flock Safety Professional Services	\$0.00

Product and Services Description

Flock Safety Platform Items	Product Description	Terms
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

Package: Elite

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately-owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Have ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
Convoy Search	Identify vehicles that have been seen together so you can verify a potential accomplice and getaway car used during a string of vehicle thefts; identify vehicles that were seen near this specific car multiple times.
Visual Search	Upload a suspect vehicle photo from and alternative source (i.e. CCTV, doorbell camera, mobile phone), and machine learning will match it to vehicles recorded by Flock Safety cameras in the past 30 days
Multi Geo Search	Perform single and multi-location-based searches to link a suspect vehicle to one, or multiple crime scenes
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), boundary mapping (i.e., precincts, county lines, beat maps), and interior floor plans (i.e., hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera
Custom Hot List Deconfliction Portal	Allows Flock users to identify overlapping investigations and provide the contact information of opted-in parties to facilitate collaboration.
Hot List Attachments	The ability to add case notes, photos, reports, and other relevant case information to Custom Hot List Alerts
Unlimited Vehicle Description Alerts	Users can set up and receive notifications for suspect vehicles based on body type, make, color, location and timeframe. Notifications are sent via app, SMS or email when a vehicle matching the predetermined criteria passes a camera in your organization's network.
Real-Time Routing (Formerly Vehicle Pursuit)	Displays possible vehicle routes on the map after Hot List Hits
Wing Gateway, Wing Cloud, Wing VMS	Unlocks access to purchase Wing.
Custom Map Layers	Ability for customers (and Flock Admins) to add, view public and proprietary ESRI map layers to FlockOS' Map experience.
AVL Connection	Displays Automatic Vehicle Location (AVL) of patrol vehicles on the map, providing additional situational awareness.

CAD Connection	Displays Computer Aided Dispatch (CAD) alerts such as 911 calls on the map, providing additional context.
Body Camera/Dash Camera Integration	Displays Body Worn Camera (BWC) locations on the map, providing additional situational awareness.
Floor Plans	Displays interior floor plans of buildings on the map, providing additional situational awareness
Camera Registry Program	Flock Safety built and maintained agency website that allows citizens to register their cameras and indicate that they may be viewed by law enforcement. Law enforcement can view each registered camera's location on the FlockOS map.
SSO	Ability to sign into the Flock Safety platform via Okta Single Sign On (SSO). This increases login speed and information security.

By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the Master Services Agreement attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Customer: TX - City of Boerne

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PO Number: _____

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Sole Source Letter for Flock Safety™ ALPR Cameras and Solution

Flock Safety is the sole manufacturer and developer of the Flock Safety ALPR Camera. Flock Safety is also the sole provider of the comprehensive monitoring, processing, and machine vision services which integrate with the Flock Safety ALPR Camera.

The Flock Safety ALPR camera and devices are the only Law Enforcement Grade ALPR System to offer the following combination of proprietary features:

1. Vehicle Fingerprint Technology™:

- Patented proprietary machine vision to analyze vehicle license plate, state recognition, and vehicle attributes such as color, type, make and objects (roof rack, bumper stickers, etc.) based on image analytics (not car registration data)
- Machine vision to capture and identify characteristics of vehicles with a paper license plate and vehicles with the absence of a license plate
- Ability to 'Save Search' based on description of vehicles using our patented Vehicle Fingerprint Technology without the need for a license plate, and set up alerts based on vehicle description
- Only LPR provider with "Visual Search" which can transform digital images from any source into an investigative lead by finding matching vehicles based on the vehicle attributes in the uploaded photo
- Falcon Flex™: an infrastructure-free, location-flexible license plate reader camera that is easy to self install. Falcon Flex ties seamlessly into the Flock ecosystem with a small and lightweight camera with the ability to read up to 30,000 license plates and vehicle attributes on a single battery charge

2. Integrated Cloud-Software & Hardware Platform:

- Ability to capture two (2+) lanes of traffic simultaneously with a single camera from a vertical mass
- Best in class ability to capture and process up to 30,000 vehicles per day with a single camera powered exclusively by solar power
- Wireless deployment of solar powered license plate reading cameras with integrated cellular communication weighing less than 5lbs and able to be powered solely by a solar panel of 60W or less
- Web based footage retrieval tool with filtering capabilities such as vehicle color, vehicle type, vehicle manufacturer, partial or full license plate, state of license plate, and object detection
- Utilizes motion capture to start and stop recording without the need for a reflective plate

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- Motion detection allows for unique cases such as bicycle capture, ATV, motorcycle, etc.
 - On device machine processing to limit LTE bandwidth consumption
 - Cloud storage of footage
 - Covert industrial design for minimizing visual pollution
3. Transparency & Ethical Product Design:
- One-of-a-kind “Transparency Portal” public-facing dashboard that details the policies in place by the purchaser, as well as automatically updated metrics from the Flock system
 - Built-in integration with NCMEC to receive AMBER Alerts to find missing children
 - Privacy controls to enable certain vehicles to “opt-out” of being captured
4. Integrated Audio & Gunshot Detection:
- Natively integrated audio detection capabilities utilizing machine learning to recognize audio signatures typical of crimes in progress (e.g., gunshots)
5. Live Video Integration:
- Ability to apply computer vision to third-party cameras using Wing™ LPR, transforming them to evidence capture devices using the same Vehicle Fingerprint technology offered on the Flock Safety Falcon™ ALPR cameras
 - Wing™ Livestream integrates live stream traffic cameras, publicly or privately owned livestream security cameras into one cloud-based situational awareness dashboard to increase response time in mission-critical incidents
 - Manage various government intelligence including ALPR, livestream cameras, CAD, automatic vehicle location (AVL) on Flock Safety’s Wing™ Suite
 - Access Wing™ Replay to unlock enhanced situational awareness with 7-day footage retention, Hot List Live Video Instant Replay, and downloadable MP4
6. Partnerships:
- Flock Safety is the only LPR provider to officially partner with AXON to be natively and directly integrated into Evidence.com
 - Flock Safety is the only LPR provider to be fully integrated into a dynamic network of Axon’s Fleet 3 mobile ALPR cameras for patrol cars and Flock Safety’s Falcon cameras
 - Access to additional cameras purchased by our HOA and private business partners, means an ever-increasing amount of cameras and data at no additional cost
-

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7. Warranty & Service:

- Lifetime maintenance and support included in subscription price
- Flock Safety is the only fully integrated ALPR one-stop solution from production of the camera to delivery and installation
- Performance monitoring software to predict potential failures, obstructions, tilts, and other critical or minor issues

Thank you,



Garrett Langley CEO, Flock Safety

About Automatic License Plate Readers (ALPR)

The Problem: Violent Crime Is Not Going Away

Nationwide, cities are experiencing a disturbing rise in homicides and violence. The FBI's 2020 Crime Report shows a 30% increase in homicides from 2019 to 2020, the largest single-year increase recorded.

Over two-thirds of the country's most populous cities saw [even more homicides](#) in 2021.

One Solution: Technology that Detects Objective Evidence to Clear More Cases

Automated License Plate Readers (ALPR) capture computer-readable images of license plates and vehicles, allowing officers to compare plate numbers against those of stolen cars or wanted individuals on a crime database like the NCIC.

ALPR devices assist law enforcement in solving crime in two ways:

- Proactive - ALPR devices provide real-time alerts when a vehicle that is stolen or associated with a known suspect is detected.
- Investigative - ALPR cameras help determine whether and which vehicle(s) were at the scene of a crime.

Is ALPR effective ?

According to the National Conference of State Legislatures, when employed ethically and objectively, ALPRs are an effective tool for law enforcement, cutting down on the time required for investigations and acting as a force multiplier. In 2011, a study by the Police Executive Research Forum concluded that ALPRs used by the Mesa, Ariz., Police Department resulted in "nearly 3 times as many 'hits' for stolen vehicles, and twice as many vehicle recoveries."

Communities with ALPR systems report crime reductions of up to 70 percent. In some areas, that included a 60 percent reduction in non-residential burglaries, 80 percent reduction in residential burglary, and a 40 percent reduction in robberies.

ALPR Provides Objective Evidence While Protecting Privacy

ALPR does not include facial recognition capabilities and does not capture personally identifiable information (PII). While eyewitnesses and individual officers are subject to inherent human bias, ALPR cameras capture wholly-objective images of vehicles and license plates, providing a clear and actionable investigative lead.

ALPR Use Cases Include:

- **AMBER Alerts:** License plate readers in metro Atlanta were able to find a vehicle containing a kidnapped one-year-old, who had been taken from his mother at random off the street. The child was recovered unharmed. Some ALPR systems integrate directly with the National Center for Missing and Exploited Children's AMBER Alert system, sending real-time alerts to officers in seconds. [[New information released about 1-year-old's kidnapping](#)]
- **Silver Alerts:** Knoxville Police were able to locate a missing elderly man who suffers from dementia after he drove away in a family vehicle. ALPR technology has helped solve hundreds of Silver Alerts across the country. [[Missing man with dementia found using Flock camera](#)]
- **Firearm violence:** The Las Vegas Trail, a high-crime area in Fort Worth, TX, saw violent crime decrease by 22% in 2021 compared with the first nine months of 2019. Fort Worth Police attributed this drop partially to the license plate reader system implemented in the neighborhood during the same period of time. [[Crime is down 22% in Fort Worth's Las Vegas Trail. How neighbors and police made it safer](#)]
- **Organized theft:** Grafton, a growing village with a bustling retail district, is dealing with increased organized retail theft – Two-thirds of all the crimes reported to Grafton police in 2020 were retail thefts. Grafton Police have implemented a license plate reader system to identify vehicles that have been involved in thefts or have been stolen themselves. In one week alone, they recovered three stolen vehicles with drivers planning to engage in retail theft. [[Losses mount as retailers fight theft rings, accuse online storefronts of doing little to stop resale of stolen goods](#)]

About Flock Safety ALPR

Privacy and Ethics Factsheet

How does Flock Safety keep devices and data secure?

Flock Safety holds itself to the highest level of security. We have implemented the following security policies and features:

- Flock Safety data and footage is encrypted throughout its entire lifecycle. All data is securely stored with AES256 encryption with our cloud provider, Amazon Web Services.
- On-device, data is only stored temporarily for a short time until it is uploaded to the cloud, at which point it is removed automatically from the local device. This means the data is secure from when it is on the Flock Safety device to when it is transferred to the cloud, using a secure connection to Flock Safety servers. While stored in the cloud, all data (both footage and metadata) is fully encrypted at rest.
- Flock Safety defaults to permanently deleting all data after 30 days on a rolling basis, setting a new standard in the industry.

Who has access to data collected by Flock Safety devices?

- Flock Safety's customers own 100% of their data and determine who has access. Flock Safety will never share or sell the data, per our privacy policy.
- With explicit written permission from the customer, Flock Safety does have the ability to grant law enforcement access to specific footage for a short period (24 hours, 48 hours, or however long the customer desires) in the event of an investigation following a crime. Access can only be granted through the approval of the customer.
- Flock Safety has maintenance software in place to measure device performance and image capture quality. This is used to diagnose issues preemptively and schedule service calls in the event of a device malfunction or emergency.

About Flock Safety ALPR

Privacy and Ethics Factsheet

How long does Flock Safety keep data?

- Flock Safety stores footage for only 30 days on a rolling basis by default, after which the footage is automatically hard deleted. The only exception to this is if a democratically-elected governing body or official legislates a different data retention period.

What features do Flock Safety devices have that enable audits and oversight?

- While searching for footage or other evidence on the Flock Safety platform, law enforcement agencies must enter reason codes to verify the legitimacy of the search and create an audit trail.
- Authorized users go through training to properly use our system and communicate with their dispatch teams.
- Flock Safety customers commit not to use the data collected to work with third-party repossession companies, traffic enforcement, revenue collection, unpaid fines, or towing companies. We do not use facial recognition or capture any personally identifiable information such as name, phone number, or address, and we do not work with federal government agencies for immigration enforcement purposes.
- Flock Safety's ALPR Transparency Portal, an optional free feature for all law enforcement customers, is the first public-facing dashboard for law enforcement agencies, city leaders, and local government officials to share policies, usage, and public safety outcomes related to ALPR technology. The ALPR Transparency Portal helps promote transparency and accountability in the use of policing technology in order to build community trust while creating a safer, more equitable society.



AGENDA ITEM SUMMARY

Agenda Date	February 13, 2024
Requested Action	RECEIVE PROPOSALS AND APPROVE RESOLUTION NO. 2024-R10; AWARDING THE CONTRACT FOR WATER METER AND GAS MODULE REPLACEMENT TO RTS WATER SOLUTIONS, LLC FOR AN AMOUNT NOT TO EXCEED \$2,673,441 AND AUTHORIZE THE CITY MANAGER TO MANAGE AND EXECUTE THE RELATED CONTRACT.
Contact Person	Sarah Buckelew, Finance Director
Background Information	<p>The project is the implementation of a city-wide replacement of approximately 5,200 water meters and modules and retrofitting 1,340 gas modules. The importance of this Project is to streamline the process of retrieving and analyzing consumption. This project focuses on replacing end of life modules with the newer and more advanced alternative. During this project we will be replacing both the meter and modules for all water meters that are currently deemed end of life and will be only replacing the modules on the gas meters as these meters are not deemed end of life.</p> <p>This project was properly bid in accordance with Texas Municipal Procurement laws. The City received 1 bid, and utilizing a qualifications and experience review process, the City selected RTS Water Solutions, LLC. The bid was submitted by ENVOCORE Utility Services which is the holding company of RTS Water Solutions, LLC.</p> <p>Delivery and installation of the modules is anticipated for October 2024. This project was approved and budgeted in the Fiscal Year 2024 budget to be financed over 3-5 years. Upon approval by Council, city staff will solicit bids/quotes for financing to obtain the most favorable terms.</p>
Item Justification	<div> <input checked="" type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Infrastructure Investment </div> <div> <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Customer Pull </div> <div> <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Service Enhancement </div> <div> <input type="checkbox"/> Mitigate Risk <input checked="" type="checkbox"/> Process Efficiency </div> <div> <input type="checkbox"/> Master Plan Recommendation <input type="checkbox"/> Other: </div>

Strategic Alignment (Example: C2 – Customer Feedback, B1 – Data Driven Decision)	C1, F2, B3
Financial Considerations	N/A
Citizen Input/Board Review	N/A
Legal Review	N/A
Alternative Options	N/A
Supporting Documents	Resolution; contract

RESOLUTION NO. 2024-R10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, AWARDING THE CONTRACT FOR WATER METER AND GAS MODULE REPLACEMENT TO _____ FOR AN AMOUNT NOT TO EXCEED \$_____; AND AUTHORIZING THE CITY MANAGER TO MANAGE AND EXECUTE THE RELATED CONTRACT

WHEREAS, the City of Boerne received one bid for the Water Meter and Gas Module Replacement Project; and

WHEREAS, City of Boerne Staff reviewed the bid, checked references, and provided a recommendation of award to RTS Water Solutions, LLC; and

WHEREAS, the City Council finds it necessary to award the contract for the Water Meter and Gas Module Replacement Project and authorizes the City Manager to manage and execute the related contract and documents;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

SECTION 1. The above recitals are true and correct and are incorporated herein and made part hereof for all purposes.

SECTION 2. The City Council awards the contract for the Water Meter and Gas Module Project to _____ for an amount not to exceed \$_____.

SECTION 3. The City Manager is hereby authorized to manage and execute the related contract and documents thereto on behalf of the City of Boerne, Texas.

PASSED and APPROVED on this the ____ day of February, 2024.

APPROVED:

Mayor Pro Tem

ATTEST:

City Secretary

CITY OF BOERNE WATER METER AND GAS MODULE INSTALLATION AGREEMENT

This Agreement ("Agreement") is made and entered into by and between the City of Boerne Texas, a home rule municipality formed and operating under the laws of the State of Texas ("City"), and RTS Water Solutions, LLC ("Contractor") (collectively, the "parties").

AGREEMENT

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Contractor agree as follows:

1. Scope of Services. For and in consideration of the payments hereinafter mentioned, Contractor agrees to commence and complete performance of the Services, defined as follows:

Provision and installation of water meters and related appurtenances as described in the attached Exhibit "A," and per Customer Proposal dated 11/16/23, incorporated herein, and all extra work in connection therewith, under the terms and conditions as stated in this Agreement, and at Contractor's own cost and expense to furnish all materials, supplies, machinery, equipment, tools superintendence, labor, insurance, and other accessories and services necessary to complete the work specified above, in accordance with the terms, conditions, and prices stated in this Agreement.

2. Commencement and Completion of Services. Contractor shall begin Services on or after October 1, 2024. Contractor shall complete the Services within 12 months of the change of the first meter. Contractor shall deliver the Services in multiple phases and at time and quantities as determined by the parties.

3. Compensation. In consideration for the Services performed by Contractor, the City agrees to pay Contractor in the amounts and manner indicated on the document attached hereto and incorporated herein as Exhibit "B", provided that the total amount for services under this Agreement shall not exceed Two Million Six Hundred Seventy-Three Thousand Four Hundred Forty-One and NO/100 Dollars (\$2,673,441).

A. Contractor shall submit invoice statements to the City setting forth the appropriate billing information. The City shall pay properly invoiced amounts for Services performed within thirty (30) days of receipt of the invoice.

B. Unless waived or otherwise agreed to in writing by the City, this Agreement shall require retainage of 5% from all progress payments to Contractor, which retainage shall not be required to be paid by the City to Contractor until final completion and acceptance by the City.

4. Warranty and Degree of Care. Contractor warrants the materials used shall be free of defect or failure for a period of at least one year from the date of final completion of the Services and that all Services provided by Contractor shall be performed in a good and workmanlike manner. All Services performed under this Agreement by Contractor shall be performed in a good and workmanlike manner in accordance with the specifications of this Agreement, in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent contractors in Texas applicable to the type

of Services contemplated hereunder, and to the satisfaction of the City or its authorized representative. In the event any defect is discovered or develops in materials provided by Contractor or Services performed by Contractor within one (1) year after final completion of the Services, Contractor will repair or replace any such materials or Services so that it is not defective and meets the requirements of this Agreement. Neither the final acceptance nor final payment shall relieve Contractor of the responsibility for faulty equipment or materials furnished by it or for faulty workmanship, and it shall remedy any defects due thereto to the satisfaction of the City within this period. Failure on the part of Contractor either to repair or replace such defects immediately upon notice shall entitle City, if it sees fit, to repair or replace the same and recover reasonable cost off such repair or replacement from Contractor and its sureties. The City shall decide all questions which arises as to the quality and acceptability of materials furnished, work performed, and the interpretation of specifications. The warranty and guarantees under this paragraph are in addition to any rights or warranties expressed or implied by law and consumer protection claims arising from misrepresentations by Contractor. The warranty and guarantee shall not be the exclusive remedy of the City, nor shall other remedies be limited to either the warranty or guarantee period.

5. Confidentiality. Contractor shall keep confidential information and documents provided by the other party confidential and shall not release them without the consent of the City. The City shall keep any confidential information and documents provided by Contractor confidential and shall not release them without the consent of Contractor, except for disclosures that are required by law.

6. Insurance. Contractor shall procure, at its own expense, insurance coverage as outlined in Exhibit "A" under "Insurance" and "Worker's Compensation and Public Liability and Property Damage Insurance." Contractor shall provide the City with written notice of any coverage limit change on the insurance. Contractor shall provide the City with proof of insurance required hereunder before any work may begin. The City shall be named as an additional insured on the policy.

7. Bonds. Prior to beginning construction or performing any Services under this Agreement, Contractor shall provide to City performance, payment, and maintenance bonds, each in the amount of 100% of the total construction costs under this Agreement, on forms approved by the City, meeting the requirements of Chapter 2253 of the Texas Government Code.

8. **INDEMNIFICATION**. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CAUSES OF ACTION, FINES, JUDGMENTS, LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, JOINT OR SEVERAL, WHETHER THEY BE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER TYPE OF CLAIM, WHICH MAY BE ASSERTED AGAINST ANY OF THEM ARISING OUT OF OR RELATED TO (I) ANY IMPROPER ACTION OR FAILURE TO FOLLOW STANDARD OPERATING PROCEDURES BY CONTRACTOR OR ITS AGENTS IN THE CARRYING OUT OF THE SERVICES DURING THE TERM OF THIS AGREEMENT; (II) THE NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF CONTRACTOR OR ITS AGENTS; (III) ANY VIOLATION OF ANY REQUIREMENT APPLICABLE TO CONTRACTOR OR ITS AGENTS UNDER ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, (IV) THE FAILURE OF CONTRACTOR TO PERFORM SPECIFIED DUTIES UNDER THIS AGREEMENT, OR (V) THE BREACH OF THIS AGREEMENT BY CONTRACTOR, EXCEPT IN EACH CASE TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF THE CITY. THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

9. Liquidated Damages. Time for performance under this Agreement is of essence and will be strictly enforced. Liquidated damages will be assessed against Contractor for failure to complete the project within the contract time. Contractor agrees that the liquidated damages provisions in this Agreement are reasonable, facially valid, are not a penalty, and do not otherwise operate as a penalty. For each and every calendar day that any work shall herein, remain incomplete after the expiration of the contract time as specified, including any time extension authorized in writing by the City, the sum of \$ 10 per calendar day may be deducted from the moneys due to Contractor, not as a penalty, but as liquidated damages. Contractor agrees that for purposes of Texas Gov't Code Ch. 2252, a bona fide dispute exists if liquidated damages are assessed under this Agreement and the City may withhold retainage to satisfy liquidated damages owed to the City hereunder. The sum of money thus deducted or charged as liquidated damages is not to be considered as a penalty, but shall be deemed, taken, and treated as reasonable liquidated damages, representing a reasonable estimate of damages, or a reasonable forecast of just compensation, because the harm caused by the breach is incapable or extremely difficult of estimation due to the public nature of the work and the likely loss to be sustained by the City and the general public, estimated at or before the time of executing this Agreement. Further, the parties acknowledge the City's paramount purposes and duty to protect the "public fisc" and the general health, safety, and welfare of the public, and the parties agree that any alleged disparity between actual and liquidated damages shall be construed as bridgeable and acceptable as a matter of law and public policy and shall be calculated and construed in favor of the City.

10. Termination.

A. Termination without Cause. The City may terminate this Agreement at any time, in whole or in part, without cause upon ten (10) days written notice to Contractor. The City shall pay Contractor for all Services satisfactorily performed prior to the date of termination in accordance with the terms hereof.

B. Termination for Cause. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City, upon giving Contractor five (5) days prior written notice, shall be entitled to terminate this Agreement in whole or in part at any time for the following:

- i. If Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors;
- ii. If a receiver trustee or liquidator of any of the property or income of Contractor shall be appointed;
- iii. If Contractor shall fail to prosecute the work or any part thereof with diligence necessary to ensure its progress and completion as prescribed by this Agreement; or
- iv. If Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City.

C. Close Out. After receipt of a notice of termination, unless otherwise directed by the City, Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including

the protection of the City's property). Among other things, Contractor shall, except as otherwise directed or approved by the City, do the following:

- i. Stop performance of the Services on the date and to the extent specified in the notice of termination;
- ii. Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the Services as is not terminated; and
- iii. In the event of such termination, Contractor will only be paid for meters delivered and installed up to the date of termination.

11. Agreement Controlling. The provisions of this Agreement shall control over any conflicting provision found in any exhibit hereto.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party.

13. Non-Discrimination. Contractor hereby agrees to refrain from any activity in the performance of this Agreement that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease, in accordance with present federal and state laws.

14. Independent Contractor. In performing Services under this Agreement, Contractor is acting as an independent contractor and not as an employee of the City. No terms or provision of this Agreement shall be construed as making Contractor the agent, servant, or employee of the City for the purpose of income tax withholding or payment, social security taxes, vacation or sick leave benefits, worker's compensation, or any other purpose. Contractor shall not be entitled to any employment or other benefits from the City, and Contractor is solely responsible for any and all federal or state taxes resulting from performance of the Services under this Agreement. No terms or provision of this Agreement shall be construed as creating a partnership or joint venture relationship between Contractor and the City.

15. No Third-Party Benefit. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties, any right or remedy under or by reason of this Agreement.

16. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas as to all matters, including but not limited to matters of validity, construction, effect and performance, without regard to conflict of law principles. All actions regarding this Agreement shall be in a court of competent subject matter jurisdiction in Kendall County, Texas.

17. Severability. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the ordinances of the City of Boerne, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that

the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein.

18. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of the City, to:

City of Boerne
Attention:
447 N. Main Street
Boerne, TX 78006

With courtesy email copy to:

And with a copy to: City Manager, City of Boerne 447 N. Main St., Boerne, TX 78006

In case of Contractor, to:
RTS Water Solutions, LLC

750 MD Route 3 South, Suite 19
Gambrills, MD 21054

With courtesy copy email to:

19. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

20. Amendment. No amendment to this Agreement shall be effective unless in writing and signed by the duly authorized representatives of both parties.

21. Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of any other different or subsequent breach.

22. Compliance with Laws. Contractor shall comply with all applicable federal, state, and local laws applicable to the services to be performed under this Agreement.

23. No Waiver of Governmental Immunity. No provision of this Agreement shall be construed as waiving the governmental immunity or other defenses of the City from claims against third parties.

24. Contractor Verifications. Contractor/Consultant verifies and certifies that it does not and during the duration of this Agreement will not:

A. do business with Iran, Sudan, or a foreign terrorist organization, as defined in Texas Government Code Chapter 2270, as amended;

B. boycott Israel as that term is defined in Texas Government Code Section 808.001 and Chapter 2271, as amended;

C. discriminate against a firearm entity or firearm trade association as defined in Texas Government Code Chapter 2274, as amended;

D. Operate as a foreign owned or controlled company in connection with a critical infrastructure project as defined in Texas Government Code Chapter 2275, as amended; or

E. boycott energy companies as defined in Texas Government Code Section 809.001 and Chapter 2276, as amended.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals and effective as of the ____ day of _____, 202__ ("Effective Date").

CONTRACTOR:

By:



Name: Francis Wheeler

Title: Vice President & COO

CITY OF BOERNE

By: _____

Name: Ben Thatcher

Title: City Manager

ATTEST:

CITY SECRETARY

EXHIBIT LIST:

EXHIBIT "A" – RFP 1023-01 (15 PAGES) & CONTRACTOR BID PACKET (6 PAGES)

EXHIBIT "B" – PRICING (2 PAGES)

WATER METER / GAS MODULE REPLACEMENT CONTRACT RFP 1023-01

INTRODUCTION AND GENERAL INFORMATION

The City of Boerne is requesting proposals and pricing from water and gas meter replacement contractors experienced in and capable of implementing the system-wide replacement of approximately 5,200 water meters/modules and retrofitting 2,100 gas modules. The City of Boerne recognizes that a qualified water and gas meter replacement contractor can efficiently expedite this system-wide change out and, based upon the multiple components that must be installed, configured, commissioned, and programmed, the City intends to award one contract to one entity ("Contractor") that will be responsible for every aspect of this change out program.

BACKGROUND

The City of Boerne, Texas, incorporated in 1909, is located in the south-central part of the state approximately 31 miles northwest of the San Antonio metroplex. The City of Boerne currently operates 11.89 square miles and has an estimated population of 21,062 as of September 2022.

The City of Boerne is unique among Texas cities. It currently owns and operates five major utility services for electric distribution, water, reclaimed water, wastewater treatment, and natural gas. In addition, the City bills for stormwater utility fees. Customers are also charged for waste pickup and recycling on the monthly utility bills.

The City concurrently reads water and gas meters through a combination of AMI where the data is delivered directly to the City, and/or by drive-by read, and/or manual meter read.

PROPOSAL SUBMISSION

The original proposal, Three (3) printed copy, and one (1) electronic copy on compact disc or USB stick be submitted in a **sealed** envelope, that shall plainly indicate:

WATER METER / GAS MODULE REPLACEMENT CONTRACT RFP 1023-01

Sealed envelope shall be delivered to the City Purchasing Coordinator, City Hall, 447 North Main Street, Boerne, TX 78006, before 2:00 P.M., Monday Nov. 20, 2023. The envelope shall be clearly labeled as RFP 1023-01 for WATER METER / GAS MODULE REPLACEMENT CONTRACT

PRE-PROPOSAL CONFERENCE

No pre-proposal conference will be held. To facilitate the clarification of requirements, proposers are requested to submit, in writing, any questions they may have by 2:00 P.M. on Monday, November 13, 2023. Any interpretation made to prospective proposers will be expressed in the form of an addendum which, if issued, will be conveyed in writing to all prospective proposers no later than 2:00 P.M. on Wednesday, November 15, 2023.

PROPOSER'S CLARIFICATION

By submitting a proposal, the proposer certifies that the RFP has been fully read and that the proposer understands the proposal method and has full knowledge of the scope, nature, and quality of work to be performed.

INSURANCE

The Successful Proposer, at the time of execution of the contract, shall also furnish the City with insurance certificates of adequate limits, as later indicated, to protect the City of Boerne, its agents, and employees from any litigation involving Worker's Compensation, Public Liability and Property Damage, involved in the work. All subcontractors must also furnish copies of their liability insurance and Worker's Compensation Insurance certificates to the City. No subcontractor will be allowed to perform any work under this contract by the City unless such certificates are submitted to and approved by the City beforehand.

WORKER'S COMPENSATION AND PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The status of the Proposer in the work to be performed is that of any independent Proposer and as such, he shall properly safeguard against any and all injury or damage to the public, to public and private property, materials and things, and as such he alone shall be responsible for any and all damage, loss or injury to persons or property that may arise, or be incurred, in or during the conduct or progress of said work without regard to whether or not the Proposer, subcontractors, agents, or employees have been negligent, and the Proposer shall keep the City free and discharged of and from any and all responsibility and liability therefore of any sort or kind. The Proposer shall assume all responsibility for risks or casualties of every description, for any or all damage, loss or injury to persons or property arising out of the nature of the work from the action of the elements, or from any unforeseen or unusual difficulty, including all legal defense costs incurred by the City. The Proposer shall assume and be liable for all blame and loss of whatsoever nature by reason of neglect or violation of any Federal, State, County or Local laws,

regulations, or ordinances; the Proposer shall indemnify and save harmless the City from all suits or actions at law of any kind whatsoever in connection with this work and shall if required by the City, produce evidence of settlement of any such action before final payment shall be made the City. Proposer's Liability Insurance Certificate shall include the save harmless clause and shall be filed with the City.

The Proposer shall maintain such insurance as will protect the proposer from claims under worker's compensation acts and from claims for damages because of bodily injury, including death, and property damage, which may arise from and during operations under this Contract, whether such operations be by himself, by any subcontractor or anyone directly, or indirectly employed by either of them. The Proposer's liability insurance shall be in the names of the Proposer and the City as their respective interests may appear. Each policy and Certificate of Insurance shall contain an endorsement naming the City of Boerne as additionally insured. Certificates of such insurance shall be filed with the City.

The minimum amount of liability insurance to be maintained by the Contractor during the life of the contract shall be as follow:

Comprehensive General Liability – for bodily injury and property damage – including any liability normally covered by a general liability policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate.

Professional Liability – in minimum amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate.

All subcontractors performing work under this contract must furnish to the City a copy of the Certificate of Insurance for Worker's Compensation and liability for bodily injury and property damage.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the Proposer agrees as follows:

The Proposer will not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Proposer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Proposer agrees to post in conspicuous

places, available to employees and applicants for employment, notices which may be provided by the City setting forth the provisions of this nondiscrimination clause.

The Proposer will, in all solicitations or advertisements for employees placed by or on behalf of the Proposer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

In the event of the Proposer's noncompliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole, or in part and the Proposer may be declared ineligible for further City contracts.

The Proposer will include the provisions of these paragraphs in every subcontract or purchase order unless exempted.

EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

No person who is or has serving/served sentence in a penal or correctional institution or has been found guilty or pleaded guilty or no contest for any type of theft shall be employed on the work covered by this Contract.

ALTERATIONS OR MODIFICATIONS

This contract will be under the direct supervision of AMI Administrator Sayge Flores. Any alterations or modifications of the work performed under this contract shall be made only by written agreement between the Proposer and the City of Boerne and shall be made prior to commencement of the altered or modified work. No claims for extra work or materials shall be allowed unless covered by written agreement.

SUBCONTRACTS

The Proposer will not be allowed to subcontract work under this contract unless written approval is granted by the AMI Administrator, Sayge Flores.

RIGHT TO AUDIT RECORDS

The City shall be entitled to audit the books and records of a proposer or any sub-proposer to the extent that such books and records relate to or affect the performance of such contract or sub-contract. Such books and records shall be maintained by the proposer for a period of three (3) years from the date of final payment under the prime contract and by the sub-proposer for a period of three (3) years from the date of final payment under the sub-contract unless a shorter period is otherwise authorized in writing.

The City of Boerne is tax exempt.

DISSEMINATION OF INFORMATION

During the term of the resulting contract, the successful proposer may not release any information related to the services or performance of services under the contract, nor publish any report or documents relating to the City, the account or performance of services under the agreement without prior written consent of the City; and shall indemnify and hold harmless the City, its officers, agents, and employees from all liability which may be incurred by reason of dissemination, publication and distribution, or circulation, in any manner whatsoever, of any information, data, documents, or material pertaining to the City, the account or the contract by the proposer or its agents or employees.

PERMITS / LICENSES

The Proposer shall, at their expense, pay all fees and procure all necessary licenses and permits needed to conduct the work required under the terms of this contract. The Proposer shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the work of this contract.

OBSERVANCE OF LAWS, ORDINANCES AND REGULATIONS

The Proposer at all times during the term of this contract shall observe and abide by all Federal, State, and Local laws which in any way affect the conduct of the work and shall comply with all decrees and orders of courts of competent jurisdiction. The Proposer shall comply fully and completely with any and all applicable State and Federal statutes, rules and regulations as they relate to hiring, wages, and any other applicable conditions of employment.

PROPOSAL REJECTION

The City of Boerne reserves the right to reject any or all proposals and to accept or reject any part of any proposal. It also reserves the right to waive any technical defects or minor irregularities, which in its discretion, is in the best interest of the City.

EXECUTION OF CONTRACT

The successful Proposer shall, within ten (10) calendar days mail contract documents to the City, to be reviewed by legal dept.

The contract, along with the RFP, its attachments, and addendums, when executed, shall be deemed to include the entire agreement between the parties; the Proposer

shall not base any claim for modification of the contract upon any prior representation or promise made by the representatives of the City, or other persons.

CONTRACT TERMINATION

The City shall have the right to terminate a contract or a part thereof before the work is completed in the event:

- A. Previous unknown circumstances arise making it desirable to the public interest to void the contract.
- B. The proposer is not complying with the specifications.
- C. The proposer refuses, neglects, or fails to supply properly trained or skilled supervisory personnel and/or workers or proper equipment.
- D. The proposer in the judgment of the City is unnecessarily or willfully delaying the performance and completion of the work.
- E. The proposer refuses to proceed with work when and as directed by the City.
- F. The proposer abandons the work or fails to provide timely reports and revenue to the city demonstrating effective and fair collection efforts.
- G. The proposer fails to adhere to the policies and procedures of the Fair Debt Collections Practices Act.

Proposers who have questions concerning various aspects of this Contract should contact the following person:

Oliver Mueller, Purchasing Coordinator
City Hall, 447 North Main Street
Boerne, TX 78006
Omuellet@boerne-tx.gov

GENERAL SCOPE OF WORK

The overall intent of this Request for Proposal is to engage a Contractor with the ability to perform the following tasks to upgrade the City's water and gas metering capabilities after October 2024.

- A. The Contractor will purchase the water meters and gas modules ("Primary Equipment") for replacement; curb stops and meter box and lids ("Secondary Equipment"); miscellaneous fittings, pipes, valves, and anything else necessary for a fully functional system ("Tertiary Equipment").

Standards with the City of Boerne's Standard Details and Materials Specifications is required.

- B. The project must be completed within 12 month of first meter change and is not to commence until after October 2024. Sufficient quantities of Primary Equipment needs to be available to begin work. Additionally, the Contractor must warranty its labor, materials, and installation for a minimum of twelve (12) months following completion as evidenced by final project approval by the City of Boerne. The contractor shall be required to provide a performance bond and ten percent (10%) maintenance bond as a condition of performing this work.
- C. The Contractor will coordinate with City of Boerne staff to obtain an electronic download of all utility billing data to import into the Contactor's electronic system.
- D. For each meter location where the meter is to be replaced, the Contractor shall electronically capture the following:
 - 1. Address.
 - 2. Incode account number.
 - 3. Photographs:
 - a. Existing condition of meter box surroundings.
 - b. Existing condition of facility being served with meter box in foreground.
 - c. Existing condition of closed meter box.
 - d. Existing condition of open meter box.
 - e. Replaced meter condition of closed meter box.
 - f. Replaced meter condition of open meter box.
 - 4. Previous meter reading of existing meter (along with digital photograph of the meter).
 - 5. Install date.
 - 6. Meter size.
 - 7. Latitude and Longitude.
 - 8. Current meter reading of new replacement meter (along with digital photograph of meter).
 - 9. Previous meter and register serial numbers.
 - 10. New meter and register serial numbers.

This data will then be delivered to the city in an acceptable electronic format suitable for mass upload in the City's customer billing system. Electronic uploads will take place two (2) times per week and coordinated with city staff.

- E. All meters removed by the Contactor shall be tagged with secure labels showing the customer address legibly written and be placed at a location designated by the city.
- F. The City of Boerne will be responsible for mass media publicity and general notices to customers through web site postings, social media, newsletters, and/or

billing inserts. The Contractor will be responsible for shutting off the water to each water meter service as well as notifying each customer of the shut off. The Contractors' team will knock on the doors of residential customer's as well as leave notifications on their doors. In the case of commercial customers, special efforts will be made to ensure minimum disruption to their water needs, which may necessitate that the water meter replacement be conducted during non-business hours and weekends. The City shall approve in writing the text of all door hangers, notices, and other written communications with customers. The Contractor will maintain a local office and local telephone number to assist customers with their concerns or to schedule locations for after-hours work.

- G. The Contractor shall propose detailed scheduling and installation procedures to the city for approval prior to scheduling or commencing installations. The procedures shall be designed to optimize the work of the field personnel and all other staff working on the project and reduce impacts on customers.
- H. The City shall be given weekly reports to track installation productivity, number of meters installed per day, number of gas modules changed out, substantial completion by route, anticipated completion date by route, and other key performance indicators.
- I. The Contractor shall assign qualified and responsible employees to each aspect of the requested work. All employees shall be presentable and act professionally during the course of the project. All employees shall wear a uniform shirt that identifies the Contractor by name, as well as a prominently displayed identification badge. All employees shall be issued and carry a letter describing the project and work to be performed. The Contractor must complete a background investigation on all employees prior to beginning work. A complete list of all employees and their duties must be submitted prior to beginning work.
- J. The Contractor shall operate/maintain all vehicles and equipment in a legal, safe, and responsible manner and have the Contractor name, logo, and contact information prominently displayed.
- K. Before, or at the time of installation, the Contractor shall inspect the existing water meter setting, including piping and shut-off valves. If the Contractor determines that conditions are such that damage to the existing piping would result, the Project Manager shall so inform the City of Boerne, not attempt the installation until the site is inspected by a City representative and postpone installation at the site until the City authorizes the Contractor to proceed with the work. The Contractor shall provide acceptable advance notice to property owners prior to any activity that will interrupt the water service.
- L. The Contractor is responsible for any damage to City owned or privately owned property that occurs at either side of the meter resulting from its installation

efforts. Any damage incurred will be promptly repaired at the Contractor's expense. In addition, and only with prior notice to the City of Boerne, the Contractor is not liable for any preexisting conditions such as leaks, faulty workmanship from previous projects, or faulty existing materials. The Contractor shall photograph the area surrounding the meter prior to commencing work to document existing conditions.

- M. The Contractor shall be responsible for replacing any meter or appurtenances improperly set by its employees. The Contractor shall correct any damage to couplings, threads, unions, or meters by use of improper tools or cross threading by an employee. The Contractor shall be responsible for correcting any leaks at the valves, couplings, or service lines that could be reasonably attributed to the meter installation reported by the City or its customers within the warranty period.
- N. The Contractor is responsible for repairing any damage it causes to meter boxes and/or vaults that result from its installation efforts. Some areas of concrete, asphalt or other paved surfaces may need to be removed in order to gain access to meters. In this case, the Contractor will restore the affected area to a condition as close as possible to the condition as it existed prior to installation and in conformance with standard City of Boerne specifications.
- O. The Contractor shall replace all meter boxes that are damaged, improperly installed, undersized, or missing with new meter boxes. Contractor shall document necessity of replacing meter boxes with photographic data and consult with the City as needed prior to replacement.
- P. Should the Contractor receive a call or complaint from a customer or the City regarding installation, the Contractor shall immediately log the call, including caller's name, address, account number if available, date, and time of call, nature of problem, and the action taken. Copies of all logs shall be forwarded to the City not less than bi-weekly.

In addition to the above scope of services, the companies that would be replying to this RFP shall: Be a company with at least five (5) years' experience.

FORM OF PROPOSAL

All proposers should be aware that the RFP and the responses thereto are in the public domain; therefore, proposers shall identify specifically any information contained in the proposal which is to be considered confidential or proprietary and exempt from disclosure. Blanket statements that entire submittals are confidential shall be unacceptable.

All proposals will become the exclusive property of the City and will not be returned.

CITY OF BOERNE RFP 1023-01 EXHIPIT"A" SCOPE OF WORK 15 PAGES TOTAL

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the proposer's ability to fulfill the requirements of the Request for Proposal. In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that proposals be organized in the matter specified.

Title page

Show the name of proposer's agency/firm, address, telephone number, name of person authorized to obligate the firm, date, and the subject: REQUEST FOR PROPOSALS –WATER METER / GAS MODULE REPLACEMENT CONTRACT RFP 1023-01

Table of Contents

Include a clear identification of the material by section and by page number.

Letter of Transmittal

Limit to one or two pages briefly stating the proposer's understanding of the work to be done and making a positive commitment to perform the work. Give the names of the persons who will be authorized to make representations for the proposer, their titles, addresses and telephone numbers.

General Information

Name of business

Mailing address / phone & fax number

Name of person to contact

Business hours of business

State if business is local, national, or international and indicate the business legal status (corporation, partnership, etc.)

Give the date business was organized and/or incorporated.

Give the location of the office from which the work is to be done and the number of professional staff employees at the office

Indicate whether the business is a parent or subsidiary in a group of firms/agencies

INFORMATION REQUIRED OF PROPOSER

A, Cost

Submit fee for this service as described within.

B. The City of Boerne will not be responsible for any out-of-pocket expenses incurred by the proposer.

C. Financial Soundness of Proposer

The proposer's most recent certified annual report, including balance sheets and profit and loss statements, should be submitted with its proposal. All information pertaining to the financial soundness of Proposer shall remain confidential. The City of Boerne will contract only with a Proposer found to be financially sound. In addition, the City should be notified if there is a major claim(s) against the firm that could impact their ability to perform.

ASSIGNMENT OF KEY STAFF

The key member(s) of the contract identified must be assigned to the contract and must remain assigned to the contract for its duration unless the City agrees in writing to modify the assignment. If a key member leaves during the course of the contract, the City must be notified immediately, and the contractor must submit the replacement name and credentials for approval by the City prior to that person starting work on the contract.

CITY INFORMATION

Successful proposer will be required to submit an Indemnity Agreement, Stipulation Against Liens and a certificate of insurance as described.

CONSULTANT SELECTION

The City will review all proposals submitted and will evaluate proposals based upon the contractor's understanding of the work to be done, its experience with similar types of work, proposed equipment and system methodology, proposed costs, and the qualifications of the staff. Proposals should provide information in sufficient detail to allow a complete evaluation.

EVALUATION FOR PROPOSALS

The award may or may not be made to the firm submitting the lowest proposal. Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration the evaluation factors set below. Only submissions that are complete and returned within the time limit will be considered.

The selection will be made by the City based on the following criteria:

- A. Experience, Qualifications and Public Sector References, Cost
- B. Capability to intergrade with Badger, Itron and Tantalus
- C. Capability to secure Materials
- D. Workorder integration software needs to be compatible with INCODE 10
- E. Experience with installing and programming ITRON products.

SELECTION COMMITTEE AND PROCEDURE FOR REVIEW OF PROPOSALS

A Selection Committee will be established to review and evaluate all proposals submitted in response to this Request for Proposal (RFP). The Committee shall conduct a preliminary evaluation of all proposals on the basis of the "Evaluation of Proposals" section of this RFP. Failure to comply with any requirements shall disqualify a proposal.

The City may arrange for a meeting with the submitting parties or entities to clarify any aspect of the proposals. The selection committee has the responsibility to negotiate the most favorable cost, terms and conditions to the City of Boerne. The negotiating process may involve one or more RFP responses and may continue until the actual award of the contract.

The City reserves the right to reject any and all proposals. The City further reserves the right to seek new proposals when such a procedure is reasonably in the best interest of the city to do so.

QUESTIONS REGARDING SPECIFICATIONS OR PROPOSAL PROCESS

To ensure fair consideration for all firms, the City prohibits communication to or with any department director, division manager, or employee during the submission process with the exception of those questions relative to interpretation of specifications or the proposal process. Such communications initiated by a firm may be grounds for disqualifying the offending firm from consideration for award of the proposal and/or any future proposal.

No interpretations of the meaning of the RFP documents will be made to any bidder orally. Every request for such interpretation shall be in writing to the City of Boerne

CITY OF BOERNE RFP 1023-01 EXHIPIT"A" SCOPE OF WORK 15 PAGES TOTAL

Purchasing Office, and to be given consideration must be received in writing prior to 02:00 P.M. on Monday, November 13, 2023 Direct inquiries to:

Oliver Mueller
Purchasing Coordinator
447 North Main St
Boerne, TX 78006
FAX: 830-815-1211
Omuellet@boerne-tx.gov

Any and all such interpretation will be in the form of an Addendum to the Contract Documents and will be faxed or emailed to all prospective firms at the number furnished by them by 2:00 P.M. on Wednesday, November 15, 2023.

Additionally, the City prohibits communications by a proposer to any City Official or employee evaluating or considering the proposals prior to the time an award decision has been made. Any communication between the proposer and the City will be initiated by the Purchasing Coordinator in order to obtain information or clarification needed to develop a proper, accurate evaluation of the proposal. Any communication outside of the Purchasing Coordinator with the proposer shall be grounds for disqualifying the offending proposer from consideration for award of the proposal and/or any future proposal.

Attachment 1: Material Items List

Attachment 1

ITEM No.	Items of Work	Item Number	Quantity	Unit price
1	BADGER 5/8" WATER METER MODEL 25 (3/4 X 7-1/2) WITH BRONZE BOTTOM (HRE REGISTER & 5 FT ERT CONNECTION) 8 DIAL 0.1 GALLONS	100-7052	5000	
2	BADGER 3/4" WATER METER MODEL 35 (3/4 X 7-1/2) WITH BRONZE BOTTOM (HRE REGISTER & 5 FT ERT CONNECTION) 8 DIAL 0.1 GALLONS	104-5494	200	
3	ITRON Ert MODULE 100W+	ERW-1300-403	5200	
4	RUBBER WATER METER ¾ GASKET (3/4"x 1/8")		10400	
5	ITRON 100 G DATA LOGGING ERT MODULE SENSUS 11 TOOTH FOR R-275	ERG-5006-002	2000	
6	ITRON 100 G DATA LOGGING ERT MODULE SENSUS 18 TOOTH FOR R-415	ERG-5006-004	100	
7	10-24 5/8" PAN HEAD PHILIPS SCREW 3/8" WIDE		4200	
8	METER BOX WITH LID	AS SPECIFIED BY THE CITY OF BOERNE'S STANDARD SPECIFICATION SHEET		
9	CURB STOP	AS SPECIFIED BY THE CITY OF BOERNE'S		

CITY OF BOERNE RFP 1023-01 EXHIPIT"A" SCOPE OF WORK 15 PAGES TOTAL

		STANDARD SPECIFICATION SHEET		
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https://www.ci.boerne.tx.us/DocumentCenter/View/14205/Standard-Specifications-and-Details-July-2015-Final_Updated-62320

MATERIALS

All Materials used must align with the City of Boerne Standard specification for Public Works Construction guidelines which can be found on the City of Boerne Website. Any materials used that are not mentioned in the Standard Specifications for Public Work Construction guidelines must be approved by the City prior to the purchase of said materials.

The City of Boerne Reserves the right of first refusal on any additional materials not used proceeding the completion of contract.



SMART UTILITIES • WATER • ELECTRIFICATION
BUILDING ENVELOPE • LIGHTING • SOLAR

"Building Solutions for Your Success"

NAESCO  Accredited Contractor

Metering

Bid Price Proposal for Water Meter / Gas Module Replacement

Presented to
City of Boerne, TX

November 16, 2023





Summary Quotation - Water Meter / Gas Module Replacement

Metering Project Summary

11/16/2023

PROJECT SUMMARY

Total Turnkey Implementation Price*:	\$	2,673,441
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PROJECT INSTALLATION CHARGES

Material Charge:	\$	2,068,436
Labor Charge:	\$	558,219
TOTAL PROJECT INSTALLATION CHARGES:	\$	2,626,656

GENERAL CONDITIONS

Storage & Disposal:	Included
A/T ForkLift:	Included
Mobilization & Pre-Con:	Included
Vehicles & Fuel:	Included
Work Order Management System:	Included
Post Installation Door Hangers:	Included
Project Management:	Included
TOTAL PROJECT GENERAL CONDITIONS CHARGES:	Included

TAXES, BONDING, and OTHER FEES

Material Sales & Use Tax:	\$	-
Payment & Performance Bond:	\$	46,785
TOTAL PROJECT TAXES, BONDING, and OTHER FEES:	\$	46,785

* Please see Terms & Conditions for Additional Information



Metering - Unit Price Quote

Water Meter / Gas Module Replacement

11/16/2023

BASE SCOPE OF WORK

Fixture Product Code	Qty in Scope	Specification	Retrofit Line Item Description	Unit Major Material Price	Unit Labor & Misc Materials Price	Total Turnkey Unit Installation Price	Extended Total Price
.625MIO	5,000	Badger Model 25 HRE Encoder	.625" Meter Install - Outdoor Installation	\$ 225.64	\$ 56.62	\$ 282.26	\$ 1,411,319
.75MIO	200	Badger Model 35 HRE Encoder	.75" Meter Install - Outdoor Installation	\$ 269.51	\$ 56.62	\$ 326.14	\$ 65,228
GASINDEXRES11	2,000	ERG-5006-002 100G DLS	Residential Gas Meter Index Replacement 11 tooth	\$ 90.24	\$ 56.47	\$ 146.71	\$ 293,422
GASINDEXRES18	100	ERG-5006-004 100G DLS	Residential Gas Meter Index Replacement 18 tooth	\$ 90.24	\$ 56.47	\$ 146.71	\$ 14,671
ENDPOINT	5,200	ERW-1300-403 100W+	Install Endpoint and Confirm Communication	\$ 134.00	\$ 27.92	\$ 161.93	\$ 842,015
SUBTOTAL MATERIAL AND LABOR CHARGES							\$ 2,626,656
Freight Charges:							Included
Mobilization & Pre-Construction Expense:							Included
Storage & Dumpsters:							Included
Lifts & Other Rentals:							Included
Vehicles & Fuel:							Included
Work Order Management System:							Included
Post Installation Door Hangers:							Included
Project Management:							Included
Material Sales & Use Tax (\$230,417.25 tax implication if valid certificate if not provided):							TAX EXEMPT
Payment & Performance Bond:							\$ 46,785
TOTAL IMPLEMENTATION PRICE							\$ 2,673,441

ADDITIONAL ITEMS

Fixture Product Code	Qty in Scope	Specification	Retrofit Line Item Description	Unit Major Material Price	Unit Labor & Misc Materials Price	Total Turnkey Unit Installation Price	Extended Total Price
LIDCUT-P		N/A	Poly Lid Drill for Transmitter Installation	\$ -	\$ 4.19	\$ 4.19	\$ -
LIDCUT-S-BATCH		N/A	Steel Lid Drill for Transmitter Installation (Batch Cut)	\$ -	\$ 17.31	\$ 17.31	\$ -
LIDCUT-S-INDIV		N/A	Steel Lid Drill for Transmitter Installation (Individual Cut)	\$ -	\$ 45.23	\$ 45.23	\$ -
LIDCUT-C		N/A	Concrete Lid Drill for Transmitter Installation	\$ -	\$ 20.34	\$ 20.34	\$ -
SMBOX-SOFT		DFW36C-12-1EBAF	Small Meter Box Replacement - Soft Dig (1" or smaller)	\$ 149.62	\$ 83.76	TBD	\$ -
SMBOX-HARD		DFW36C-12-1EBAF	Small Meter Box Replacement - General Hardscape (1" or smaller)	\$ 149.62	\$ 340.66	TBD	\$ -
RESSTOP		Mueller B-24350	.625" - .75" Curb Stop Replacement	\$ 149.66	\$ 84.15	\$ 233.82	\$ -



Water Meter / Gas Module Replacement Proposal Terms & Conditions

Acceptance of the attached Proposal (the "Proposal") by Customer shall be acceptance of all terms and conditions set forth herein. These terms and conditions shall supersede any conflicting terms or conditions in any other document. Any terms and conditions set forth in any other document in addition or different from those set forth herein are objected to and shall have no force or effect.

Customer's agreement herewith shall be evidenced by Customer's signature herein or by permitting to commence work on the project.

I. General Terms and Conditions

1. Proposal Expiration.

This Proposal pricing is contingent upon executed agreement by (1/15/2023). Estimated project start: October 2024

In the event this Proposal is not properly or timely accepted by the Customer, the Proposal, together with any and all related terms and conditions and deliverables, are subject to amendment, change and/or substitution by Envocore in its sole and absolute discretion.

2. Material.

The turnkey pricing (the "Pricing") in the Proposal is based on usage of the specified materials. Material changes may result in changes to Pricing. All increases in material cost due to tariffs will be passed along to the Customer. Material must be ordered by 2/1/24 to guarantee proposal pricing.

It is possible that the materials included in the Proposal could become either temporarily or permanently unavailable for reasons beyond Envocore's control.

In the event that materials become temporarily unavailable, the time for performance will be automatically extended by an amount of time identical to that in which the materials were unavailable.

In the event that materials become permanently unavailable, Envocore may either:

- (i) substitute different materials of equal or better quality at no additional cost to Customer; or
- (ii) substitute materials of a different quality and adjust Pricing.

Customer approval is required prior to the substitution of materials of a different quality due to permanent unavailability. The time for performance will also be automatically extended in the event that materials become permanently unavailable.

3. Wage Rates.

Prevailing or Davis Bacon wages are not included in the Pricing.

4. Bonding.

Costs for payment and performance bonds are included in the Pricing.

5. Taxes.

Federal, state and/or local taxes are not applicable to the project. In the event that the taxes are initially not believed to be applicable to the project, and subsequently determined to be applicable, such additional costs will be added to the Pricing. A valid tax exemption certificate must be provided and specifically name Envocore and its subsidiaries as an authorized agent for this project. (\$230,417.25 sales and use tax implication if valid certificate is not provided.)

6. Payment Terms.

Net thirty (30) days.

Retainage.

In the event that retainage is to be withheld, Customer will withhold an aggregate amount of five percent (5%).

8. Permits and Fees.

Permits and fees are included in the Pricing.

9. Workmanship Warranty.

Envocore, or its subsidiaries, warrants its workmanship for a period of one (1) year from substantial completion of the work. Upon completion of the work, Envocore, or its subsidiaries, will provide Customer with a certificate documenting the date of substantial completion.

10. Material Warranties.

The materials included in the Proposal are covered by manufacturer's warranties. Each such warranty is administered by the respective manufacturer of the material.

Envocore, or its subsidiaries will furnish to Customer, upon completion of the work, contact information for manufacturers.

For warranty purposes, the manufacturer may request that defective material be returned to it for inspection. Customer agrees to retain all materials which prematurely fail and provide such materials to the manufacturer(s) upon request.

11. Confidentiality of Proposal.

The Proposal is confidential and contains proprietary information and Envocore IP. Neither the Proposal nor any of the information contained in it may be reproduced or disclosed to any third party under any circumstances without the prior written permission of Envocore, or its subsidiaries. Customer acknowledges and agrees that the disclosure, copying, distribution or use of the Proposal or any information contained therein is strictly prohibited.

12. Areas Containing Hazardous Materials.

Envocore, or its subsidiaries, shall not under any condition perform work in areas containing hazardous materials (i.e. asbestos, lead paint, etc.). In the event that hazardous material is reasonably suspected to exist, or discovered to exist, by Envocore, or its subsidiaries, during the performance of the work, Envocore, or its subsidiaries, shall immediately suspend all work and shall not resume performance of the work until the hazardous materials is reasonably determined not to exist or properly remediated at the sole cost and expense of the Customer.



Water Meter / Gas Module Replacement Proposal Terms & Conditions

Acceptance of the attached Proposal (the "Proposal") by Customer shall be acceptance of all terms and conditions set forth herein. These terms and conditions shall supersede any conflicting terms or conditions in any other document. Any terms and conditions set forth in any other document in addition or different from those set forth herein are objected to and shall have no force or effect.

Customer's agreement herewith shall be evidenced by Customer's signature herein or by permitting to commence work on the project.

II. Metering Specific Terms and Conditions

SCOPE OF WORK NOTES AND METERING SPECIFIC TERMS AND CONDITIONS	
•	This proposal is assumed to be executed under RTS Water Solutions, a wholly owned subsidiary of Envocore, on a basis that the local licensure and/or Certificate of Authority is held by this particular Envocore business unit entity.
•	Itron programming handhelds to be provided by the City of Boerne, TX
•	The pricing is based on being awarded the entire project at the quantities as bid. Unit pricing includes fixed general conditions costs that are allocated throughout the entirety of the scope. If actual quantities are increased or decreased by more than 10%, Envocore reserves the right to adjust unit pricing to reallocate these fixed general conditions costs.
•	This proposal is based on a single mobilization with an anticipated completion of 7.0 months or less based on the exact BASE SOW lined out in the bidding documents. Should the FINAL SOW significantly change beyond quoted quantities, the projected schedule of completion will need to be amended.
•	The projected installation schedule is based on a crew size of 4 installers and 1 Construction Manager. The projected installation schedule is contingent upon accessibility, scheduling and material availability for the installation crews.
•	Envocore's ability to begin work is predicated on Customer Account Data being provided in a timely manner. Customer Account Data are utilized in construction of the Workorder Management System utilized by Envocore in completing the Scope of Work of this contract. It is understood that any stated consecutive calendar day project duration does not begin to count until, at a minimum, two weeks AFTER Envocore has received Customer Account Data from City of Boerne, TX.
•	All products to be provided to Envocore shall be provided in sufficient quantities to allow for the uninterrupted installation of all meters targeted for upgrade. Typically a 2 month supply of materials is requested to be on hand at the onset of installation. If production stoppage occurs due to availability of material, an additional mobilization cost will be incurred.
•	Installation of ancillary infrastructure items that are included in base scope of work, or detailed as an additional optional item in this proposal as priced per unit in this Proposal, are with the assumption that such installation occurs at the time of regular meter installation. Should any of these installation efforts be requested at a time other than regular meter installation, additional fees may be assessed. Examples of these items include, but are not limited to: - meter boxes/lids - curb stops - isolation valves - retrosetters - backflow preventers/check valves - etc.
•	Additional work beyond scope items specifically identified in this price proposal will be priced on a Time & Material (T&M) rate of \$131 per hour plus material at cost +15%
•	Envocore, or its subsidiaries, may request to be compensated for work delays caused by the customer. Said compensation will be calculated using this formula: T&M rate per hour x hours of delay x the number of Envocore employees or contract employees delayed.
•	Should a City-side valve require replacement/installation the City must shut down the main line feeding that service to facilitate the valve work. Envocore will not attempt to replace/install valves on a "hot" line.
•	Envocore will repair any service lines within 12" of meter pit if damage was caused by Envocore's negligence, does not include compression couplings on a pressurized line or faulty plumbing.
•	Over the duration of the project, some service locations may be returned back to City of Boerne, TX for repair (RTU) if the meter service is deemed "inaccessible." Envocore will only return and install the new meter and transmitter using normal installations techniques for RTU'd accounts if City of Boerne, TX completes required repairs within 10 business days. If City of Boerne, TX doesn't complete repairs within said window. City of Boerne, TX will be charged a TRIP FEE in the amount of 50% of the quoted installation cost of the new meter and transmitter, and this account will be removed from the targeted install list for Envocore. "Inaccessible" is generally defined as a meter service location that is in a condition that prevents the removal of the existing meter and installation of a new meter using reasonable installation techniques. Conditions that may cause a meter to be classified as "inaccessible" include (but are not limited to): 1) Locations where a faulty valve prevents Envocore from shutting off the water to the facility. A faulty shut off valve would be considered a pre-existing condition that would prevent Envocore from replacing the meter. It would either be returned to City of Boerne, TX for repair or repaired by Envocore at an additional cost. 2) Locations where the meter flange or coupling is located outside of the meter pit. 3) Locations that cannot be reached and require that the lid ring and/or meter pit to be removed. 4) Meters where City of Boerne, TX's customer prevents Envocore from accessing the meter. 5) If it is determined that attempting a meter install will result in failure of the service line. When all Scope of Work that it is possible to complete has been completed, Envocore will initiate a "true up" to adjust contracted quantities to be installed.
•	Envocore will work closely with City of Boerne, TX to develop a sequence for executing this project. Envocore will then proceed with work in the agreed upon sequence. Envocore recommends informative/educational mailings describing the overall program be sent in advance of the upgrade program. This is a good tool to prepare the customer base for the upgrade program. These mailing can be included in the water bill or mailed separately. Envocore routinely works with Utilities to develop the appropriate verbiage to include in its public education mailings and can provide samples upon request.
•	Envocore will be responsible for providing meter exchange data to City of Boerne, TX to upload into their billing software.
•	Software interface between the AMR/AMI system and Utility Billing is handled by others.



Water Meter / Gas Module Replacement Proposal Terms & Conditions

Acceptance of the attached Proposal (the "Proposal") by Customer shall be acceptance of all terms and conditions set forth herein. These terms and conditions shall supersede any conflicting terms or conditions in any other document. Any terms and conditions set forth in any other document in addition or different from those set forth herein are objected to and shall have no force or effect.

Customer's agreement herewith shall be evidenced by Customer's signature herein or by permitting to commence work on the project.

III. Project Specific Inclusions/Exclusions

PROJECT SPECIFIC INCLUSIONS/EXCLUSIONS		
Included in Pricing	NOT included in Pricing	
		General Conditions Items
✓		PROJECT MANAGEMENT: A dedicated on site Construction Manager will serve as the primary point of contact during the Deployment Phase of this project. Cost for this has been embedded in unitized pricing.
✓		STORAGE AND MATERIAL HANDLING: A quantity of 2 Conex have been included in this proposal. Cost for this has been embedded in unitized pricing.
✓		RECYCLABLE SCRAP MATERIALS: All meters removed by the Contactor shall be tagged with secure labels showing the customer address legibly written and be placed at a location designated by the city.
✓		GENERAL WASTE DISPOSAL: A Quantity of 1 dumpster has been included in this proposal. Cost for this has been embedded in unitized pricing.
✓		WORK ORDER MANAGEMENT SYSTEM: Ensignt+ Workorder Management System setup and used. 2 external user IDs included in the pricing of this proposal. Additional user IDs may be added for a cost of \$135 per month per user ID. Costs for utilization of Ensignt+ Work Order Management System are included in the unitized pricing detailed in this Proposal.
✓		VEHICLES AND FUEL EXPENSE: Newer model vehicles with Company Logo materials shall be provided for all field installation crew members. Vehicle fuel and maintenance expenses are included as part of the unitized pricing detailed in this Proposal.
✓		CUSTOMER NOTIFICATIONS: Post install doorhangers will be left at each location after meter installation. Cost for this has been embedded in unitized pricing.
✓		RENTAL EQUIPMENT: Forklifts, vacuum excavators, mini excavators, and other equipment to be used in conjunction of this project. Cost for this has been embedded in unitized pricing.
	✓	HAZARDOUS WASTE DISPOSAL: Hazardous waste disposal is not anticipated on this project.
	✓	CITY SIDE SERVICE LINE MATERIAL IDENTIFICATION: Identification of supply piping material with drop-down selection in work order management system. Identification of lead lines shall be further documented with a photo.
	✓	CUSTOMER SIDE SERVICE LINE MATERIAL IDENTIFICATION: Identification of supply piping material with drop-down selection in work order management system. Identification of lead lines shall be further documented with a photo.
	✓	MBE/WBE/SBE SUBCONTRACTOR INVOLVEMENT: MBE/WBE/SBE participation has not been included in this proposal pricing.
INCLUDED IN BASE SOW PRICING	ADDITIONAL ITEMS	
		Typical Installation Items
✓		Installation of new rubber meter gasket and installation of new bolts as required.
	✓	Replace Meter Boxes or Vaults
	✓	Replace Meter Boxes Lids
	✓	Modification of meter boxes to accommodate meter position
	✓	Spool pieces may be necessary to complete installation. These can be provided at the T&M rate presented in specific terms and conditions.
	✓	Cut hole in meter box lid to accommodate AMI Through the Lid Antenna



EXHIBIT "B" PRICING PAGE 1 OF 2

Metering - Unit Price Quote

Water Meter / Gas Module Replacement

11/16/2023

BASE SCOPE OF WORK

Feature Product Code	Qty In Scope	Specification	Retrofit Line Item Description	Unit Major Material Price	Unit Labor & Misc Materials Price	Total Turnkey Unit Installation Price	Extended Total Price
625MIO	5,000	Badger Model 25 HRE Encoder	625" Meter Install - Outdoor Installation	\$ 225.64	\$ 56.62	\$ 282.26	\$ 1,411,319
75MIO	200	Badger Model 35 HRE Encoder	.75" Meter Install - Outdoor Installation	\$ 269.51	\$ 56.62	\$ 326.14	\$ 65,228
GASINDEXRES11	2,000	ERG-5006-002 100G DLS	Residential Gas Meter Index Replacement 11 tooth	\$ 90.24	\$ 56.47	\$ 146.71	\$ 293,422
GASINDEXRES18	100	ERG-5006-004 100G DLS	Residential Gas Meter Index Replacement 18 tooth	\$ 90.24	\$ 56.47	\$ 146.71	\$ 14,671
ENDPOINT	5,200	ERV-1300-403 100W+	Install Endpoint and Confirm Communication	\$ 134.00	\$ 27.92	\$ 161.93	\$ 842,015
SUBTOTAL MATERIAL AND LABOR CHARGES				\$ 2,626,656			
Freight Charges:				Included			
Mobilization & Pre-Construction Expenses:				Included			
Storage & Dumpsters:				Included			
Lifts & Other Rentals:				Included			
Vehicles & Fuel:				Included			
Work Order Management System:				Included			
Post Installation Door Hangers:				Included			
Project Management:				Included			
Material Sales & Use Tax (\$230,417.25 tax implication if valid certificate if not provided):				TAX EXEMPT			
Payment & Performance Bond:				\$ 46,785			
TOTAL IMPLEMENTATION PRICE				\$ 2,673,441			

ADDITIONAL ITEMS

Feature Product Code	Qty In Scope	Specification	Retrofit Line Item Description	Unit Major Material Price	Unit Labor & Misc Materials Price	Total Turnkey Unit Installation Price	Extended Total Price
LIDCUT-P	N/A		Poly Lid Drill for Transmitter Installation	\$ -	\$ 4.19	\$ 4.19	\$ -
LIDCUT-S-BATCH	N/A		Steel Lid Drill for Transmitter Installation (Batch Cut)	\$ -	\$ 17.31	\$ 17.31	\$ -
LIDCUT-S-INDIV	N/A		Steel Lid Drill for Transmitter Installation (Individual Cut)	\$ -	\$ 45.23	\$ 45.23	\$ -
LIDCUT-C	N/A		Concrete Lid Drill for Transmitter Installation	\$ -	\$ 20.34	\$ 20.34	\$ -
SMBOX-SOFT		DFW36C-12-1EBAF	Small Meter Box Replacement - Soft Dig (1" or smaller)	\$ 149.62	\$ 83.76	\$ TBD	\$ -
SMBOX-HARD		DFW36C-12-1EBAF	Small Meter Box Replacement - General Hardscope (1" or smaller)	\$ 149.62	\$ 340.66	\$ TBD	\$ -
RESTOP		Muehler B-24350	.625" - .75" Curb Stop Replacement	\$ 149.66	\$ 84.15	\$ 233.82	\$ -



PRICING PROPOSAL


Summary Quotation - Water Meter / Gas Module Replacement

Metering Project Summary

11/16/2023

PROJECT SUMMARY		
Total Turnkey Implementation Price*:	\$	2,673,441
PROJECT INSTALLATION CHARGES		
Material Charge:	\$	2,068,436
Labor Charge:	\$	558,219
TOTAL PROJECT INSTALLATION CHARGES:	\$	2,626,656
GENERAL CONDITIONS		
Storage & Disposal:	Included	
A/T ForkLift:	Included	
Mobilization & Pre-Con:	Included	
Vehicles & Fuel:	Included	
Work Order Management System:	Included	
Post Installation Door Hangers:	Included	
Project Management:	Included	
TOTAL PROJECT GENERAL CONDITIONS CHARGES:	Included	
TAXES, BONDING, and OTHER FEES		
Material Sales & Use Tax:	\$	-
Payment & Performance Bond:	\$	46,785
TOTAL PROJECT TAXES, BONDING, and OTHER FEES:	\$	46,785

* Please see Terms & Conditions for Additional Information



AGENDA ITEM SUMMARY

Agenda Date	02/13/2024
Requested Action	APPROVE RESOLUTION NO. 2024-R11; TO RATIFY THE EXECUTION OF CHANGE ORDER #5 TO THE AGREEMENT BETWEEN THE CITY OF BOERNE AND AGAVE DESIGN STUDIO, LLC FOR THE COMPLETION OF THE RIVER ROAD PARK BANK STABILIZATION PROJECT FOR AN ADDITIONAL AMOUNT NOT TO EXCEED \$92,000.
Contact Person	Lisette Jimenez, Director of Parks & Recreation
Background Information	<p>The River Road Park Bank Stabilization project construction contract was awarded to Agave Design Studio, LLC on August 8, 2023, for \$2,305,523. Construction began on September 18, 2023, and the expected completion date is the end of March 2024, dependent upon weather conditions and rainfall.</p> <p>During structural construction of the fishing piers, large amounts of sediment resulted from drilling the holes for the metal pier structures. This sediment disturbance within the creek triggered the need for a Texas Parks & Wildlife Department (TPWD) permit. As a result, City staff worked with TPWD staff to develop a habitat restoration plan which includes removal of the disturbed sediment, creation of fish habitat, and planting of native riparian plants along the creek banks. The sediment removal required immediate action because of unknown weather conditions, creek accessibility, sediment conditions, and project schedule impact.</p> <p><u>Cost Breakdown</u></p> <p>The \$2,305,523 contracted project cost included a contingency amount of \$109,786.56 which has been almost fully exhausted by the first four project change orders (\$4,711.56 will remain):</p> <ul style="list-style-type: none"> • <u>Change Order #1</u>: \$38,000 for Aerators to improve the water quality and aquatic species habitat in the creek. • <u>Change Order #2</u>: \$2,800 for Rainbird Irrigation Controller which allows this park to operate with the same irrigation system controls as other irrigated City sites.

	<ul style="list-style-type: none"> • <u>Change Order #3</u>: \$10,600 for the addition of concrete curb in place of steel bed edging to reduce maintenance and provide a safer environment for visitors. • <u>Change Order #4</u>: \$53,675 to repair damaged original concrete flatwork, remove hazards in the walkways, and correct ADA conflicts within the project boundaries. <p><u>Council Consideration</u> Since this change order exceeds the contracted project funding and the sediment removal required immediate action, staff requests that the Council ratify the execution of Change Order #5 for the following additional work to the River Road Bank Stabilization project:</p> <table border="1"> <thead> <tr> <th>Change Order #5</th><th>Cost Detail</th></tr> </thead> <tbody> <tr> <td>Removal and hauling of sediment from the project site related to the creation of a habitat restoration plan</td><td>\$86,000</td></tr> <tr> <td>Labor to install aquatic habitat with boulders and woody debris</td><td>\$ 6,000</td></tr> <tr> <td>TOTAL</td><td>\$92,000.00</td></tr> </tbody> </table> <p>Budgeted funds are available within the Capital Projects Fund for the City Manager to manage the contract increase of \$92,000. If a budget amendment becomes necessary, staff will bring that forward to Council later in the fiscal year.</p>	Change Order #5	Cost Detail	Removal and hauling of sediment from the project site related to the creation of a habitat restoration plan	\$86,000	Labor to install aquatic habitat with boulders and woody debris	\$ 6,000	TOTAL	\$92,000.00
Change Order #5	Cost Detail								
Removal and hauling of sediment from the project site related to the creation of a habitat restoration plan	\$86,000								
Labor to install aquatic habitat with boulders and woody debris	\$ 6,000								
TOTAL	\$92,000.00								
Item Justification	<div> <div> <input checked="" type="checkbox"/> Legal/Regulatory Obligation <input type="checkbox"/> Reduce Costs <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Mitigate Risk <input type="checkbox"/> Master Plan Recommendation </div> <div> <input checked="" type="checkbox"/> Infrastructure Investment <input type="checkbox"/> Customer Pull <input type="checkbox"/> Service Enhancement <input type="checkbox"/> Process Efficiency <input type="checkbox"/> Other: </div> </div>								
Strategic Alignment	Environmental Responsibility, F2 Investing in and maintaining high-quality infrastructure systems and public assets								
Financial Considerations	Funding is available in our capital projects budget.								

Citizen Input/Board Review	N/A
Legal Review	N/A
Alternative Options	
Supporting Documents	Executed Agave Contract Change Orders #1 - 5

RESOLUTION NO. 2024-R11

A RESOLUTION TO RATIFY THE EXECUTION OF CHANGE ORDER NO. 5 TO THE AGREEMENT BETWEEN THE CITY OF BOERNE AND AGAVE DESIGN STUDIO, LLC FOR THE COMPLETION OF THE RIVER ROAD PARK BANK STABILIZATION PROJECT FOR AN ADDITIONAL AMOUNT NOT TO EXCEED \$92,000.00

WHEREAS, the City of Boerne City Council awarded the bid for the River Road Bank Park Stabilization Project to Agave Design Studio, LLC for an amount not to exceed \$2,305,523.44; and

WHEREAS, since construction began on September 18, 2023, there have been several change orders required in order to complete the project; and

WHEREAS, the project included a contingency amount which has been almost fully exhausted by the first four project change orders; and

WHEREAS, Change Order No. 5 exceeds the contracted project funding and the sediment removal required immediate action; and

WHEREAS, the City Council finds it necessary to ratify the execution of Change Order No. 5 to the agreement with Agave Design Studio, LLC for the completion of the River Road Bank Park Stabilization Project;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

Ratify the execution of Change Order No. 5 to the agreement between the City of Boerne and Agave Design Studio, LLC for the completion of the River Road Park Bank Stabilization Project for an additional amount not to exceed \$92,000.00.

PASSED and APPROVED on this the ____ day of February, 2024.

APPROVED:

Mayor Pro Tem

ATTEST:

City Secretary

RESOLUTION NO. 2023-R60

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS, AWARDING THE CONTRACT FOR THE RIVER ROAD BANK PARK STABILIZATION PROJECT TO AGAVE DESIGN STUDIO, LLC FOR AN AMOUNT NOT TO EXCEED \$2,305,523.44; AND AUTHORIZING THE CITY MANAGER TO MANAGE AND EXECUTE THE RELATED CONTRACT

WHEREAS, the City of Boerne received two bids for the River Road Bank Park Stabilization Project; and

WHEREAS, City of Boerne Staff reviewed the bids, checked references, and provided a recommendation of award to Agave Design Studio, LLC; and

WHEREAS, the City Council finds it necessary to award the contract for the River Road Bank Park Stabilization Project and authorizes the City Manager to manage and execute the related contract and documents;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

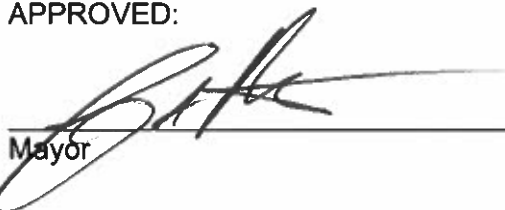
SECTION 1. The above recitals are true and correct and are incorporated herein and made part hereof for all purposes.

SECTION 2. The City Council awards the contract for the River Road Bank Park Stabilization Project to Agave Studio, LLC for an amount not to exceed \$2,305,523.44.

SECTION 3. The City Manager is hereby authorized to manage and execute the related contract and documents thereto on behalf of the City of Boerne, Texas.

PASSED and APPROVED on this the 8th day of August, 2023.

APPROVED:



Mayor

ATTEST:

Lori A. Carroll
City Secretary

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between CITY OF BOERNE ("Owner") and AGAVE DESIGN STUDIO, LLC ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **Project consists of all labor, equipment, and work for construction of rock sill, coir fiber matting, concrete sidewalk, steel fishing piers, steel boardwalk, earthwork, landscape and irrigation.**

ARTICLE 2 – THE PROJECT

- 2.1 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **City of Boerne, River Road Park Bank Stabilization Project**

ARTICLE 3 – ENGINEER

- 3.1 The Project has been designed by **Ecosystem Planning & Restoration, LLC, P.O. Box 15646, San Antonio, Texas 78212.**

ARTICLE 4 – CONTRACT TIMES

- 4.1 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.2 *Contract Times: Days*
- A. The Work will be substantially completed within **150** calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **180** calendar days after the date when the Contract Times commence to run.
- 4.3 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.1 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration

proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner **Five Hundred Dollars (\$500)** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **Five Hundred Dollars (\$500)** for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.4 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times,

ARTICLE 5 – CONTRACT PRICE

- 5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.1 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.2 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work as provided in Paragraph 6.2.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

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1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 90 percent of Work completed (with the balance being retainage).
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

6.3 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.1 All amounts not paid when due shall bear interest at the rate of 3 percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.1 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and

procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.1 *Contents (Consultant to complete prior to execution of contract)*

- A. The Contract Documents consist of the following:
 - 1. This Agreement and Special Conditions of Agreement
 - 2. Exhibits to this Agreement
 - 3. Payment bond & Performance bond
 - 4. Advertisement and Instructions to Bidders
 - 5. General Conditions
 - 6. Supplementary Conditions
 - 7. Standard and Technical Specifications in the Project Manual.
 - 8. Construction Drawings
 - 9. Addenda
 - 10. Contractor's Bid
 - 11. Exhibits to this Agreement
 - 12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.

- b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.1.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.1 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.2 *Assignment of Contract*

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

10.3 *Successors and Assigns*

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

10.4 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.5 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.5:

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

10.6 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 11 - INDEMNITY PROVISIONS

11.1 THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS ATTACHED TO THIS AGREEMENT CONTAIN PROVISIONS THAT MAY RELIEVE ONE PARTY FOR RESPONSIBILITY IT WOULD OTHERWISE HAVE UNDER THE LAW FOR DAMAGES OR OTHER LIABILITY ARISING OUT OF THE WORK.

11.2 EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, AND ALL OTHER ATTACHMENTS TO THIS AGREEMENT AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO; THAT IT HAS IN FACT READ THIS AGREEMENT AND ALL ATTACHMENTS HERETO AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE PRECEDING ITS EXECUTION OF THIS AGREEMENT AND HAS RECEIVED OR VOLUNTARILY CHOSEN NOT TO RECEIVE THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT; AND THAT IT RECOGNIZES THAT CERTAIN TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEMENT OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, OR ANY OTHER ATTACHMENTS TO THIS AGREEMENT ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS".

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 9/16/2023 (which is the Effective Date of the Contract).

OWNER:

Ben Thatcher

By: Ben Thatcher

Title: City Manager

Attest: Lori L. Carroll

Title: CITY SECRETARY

Address for giving notices:

447 N. MAIN ST.

BOERNE TX 78006

CONTRACTOR:

AGAVE DESIGN STUDIO LLC

By: Keith Brady

Title: KEITH BRADY PRESIDENT

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Vanessa Brady

Title: VANESSA BRADY
DIRECTOR OF OPERATIONS

Address for giving notices:

9 SPANISH PASS LA

BOERNE TEXAS 78006

License No.: _____
(where applicable)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2023-1064342

Date Filed:
08/24/2023

Date Acknowledged:

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

AGAVE DESIGN STUDIO
Boerne, TX United States

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

City of Boerne

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

23-0001
River Bank Stabilization

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

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is KEITH BRADY, and my date of birth is 5-1-1974

My address is 9 SPANISH PASS RD, BOERNE, TEXAS 78006, KENDALL
(street) (city) (state) (zip code) (country)

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

Executed in KENDALL County, State of TEXAS, on the 1 day of SEP, 20 23
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/01/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Basis Insurance Group, LLC 8700 Crownhill Blvd Ste 401 San Antonio TX 782091128		CONTACT NAME: BALDWIN, HARRY PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS:															
INSURED Agave Design Studio LLC 9 Spanish Pass Rd Boerne TX 78006		INSURER(S) AFFORDING COVERAGE <table border="1"><thead><tr><th>INSURER</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Ohio Security Insurance Company</td><td>24082</td></tr><tr><td>INSURER B: Ohio Security Insurance Company</td><td>24082</td></tr><tr><td>INSURER C: Ohio Security Insurance Company</td><td>24082</td></tr><tr><td>INSURER D: The Ohio Casualty Insurance Company</td><td>24074</td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>		INSURER	NAIC #	INSURER A: Ohio Security Insurance Company	24082	INSURER B: Ohio Security Insurance Company	24082	INSURER C: Ohio Security Insurance Company	24082	INSURER D: The Ohio Casualty Insurance Company	24074	INSURER E:		INSURER F:	
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INSURER D: The Ohio Casualty Insurance Company	24074																
INSURER E:																	
INSURER F:																	

COVERAGES**CERTIFICATE NUMBER:** 0263051785**REVISION NUMBER:** 2016-03

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		BKS64756477	07/24/2023	07/24/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		BAS64756477	07/24/2023	07/24/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		USO64756477	07/24/2023	07/24/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	XWS64756477	07/24/2023	07/24/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of Boerne Rrpbs 447 N. Main Street Boerne TX 78006	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Curtis Luken
--	---

MERCHANTS BONDING COMPANY™

MERCHANTS NATIONAL BONDING, INC. P.O. BOX 14498, DES MOINES, IA 50306-3498
PHONE: (800) 678-8171 FAX: (515) 243-3854

Performance Bond

Bond No. 100178919

CONTRACTOR:

(Name, legal status and address)

Agave Design Studio, LLC
9 Spanish Pass Rd
Boerne, TX 78006

OWNER:

(Name, legal status and address)

City of Boerne
P. O. Box 1677
Boerne, TX 78006

CONSTRUCTION CONTRACT

Date:

Amount: \$2,305,523.00

Description:

(Name and location)

City of Boerne - River Road Park Bank Stabilization Project

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$2,305,523.00

Modifications to this Bond: ☒ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

Agave Design Studio, LLC

Signature: 

Name

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY— Name, address and telephone)

AGENT or BROKER:

Hughston Insurance Agency Inc
PO Box 8550
Brownsville, TX 78526
956-542-4387

SURETY

Company: *(Corporate Seal)*

Merchants National Bonding, Inc.

Signature: 

Name David C Hughston

and Title: Attorney-In-Fact

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Ecosystem Planning & Restoration, LLC
P. O. Box 15646
San Antonio, TX 78212

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

Printed in cooperation with American Institute of Architects (AIA). The language in this document conforms exactly to the language used in AIA Document A312-Performance Bond-2010 edition.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract:

§ 5.2 Undertake to perform and complete the Construction Contract itself through its agents or independent contractors:

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4 and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
2. additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____

MERCHANTS BONDING COMPANYTM

MERCHANTS NATIONAL BONDING, INC. P.O. BOX 14498, DES MOINES, IA 50306-3498
PHONE: (800) 678-8171 FAX: (515) 243-3854

Payment Bond

Bond No. 100178919

CONTRACTOR:

(Name, legal status and address)

Agave Design Studio, LLC
9 Spanish Pass Rd
Boerne, TX 78006

OWNER:

(Name, legal status and address)

City of Boerne
P. O. Box 1677
Boerne, TX 78006

CONSTRUCTION CONTRACT

Date:

Amount: \$2,305,523.00

Description:

(Name and location)

City of Boerne - River Road Park Bank Stabilization Project

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$2,305,523.00

Modifications to this Bond: ☒ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*
Agave Design Studio, LLC

Signature: 
Name
and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY— Name, address and telephone)

AGENT or BROKER:

Hughston Insurance Agency Inc
PO Box 8550
Brownsville, TX 78526
956-542-4387

SURETY

Company: *(Corporate Seal)*
Merchants National Bonding, Inc.

Signature: 
Name David C. Hughston
and Title: Attorney-In-Fact

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Ecosystem Planning & Restoration, LLC
P. O. Box 15646
San Antonio, TX 78212

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

Printed in cooperation with American Institute of Architects (AIA). The language in this document conforms exactly to the language used in AIA Document A312-Payment Bond-2010 edition.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3., the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed: and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2. or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 **Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 **Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____

MERCHANTS BONDING COMPANY™

POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

David C Hughston

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 15th day of August, 2023.



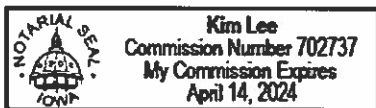
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 15th day of August, 2023, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Kim Lee
Notary Public

(Expiration of notary's commission
does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 15th day of August, 2023.



William Warner Jr.
Secretary

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.1 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum Date</u>
RRPark Addendum No.1	July 12, 2023
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.1 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ADDENDUM NO. 1

PROJECT NAME: River Road Park Bank Stabilization Project

DATE: July 12, 2023 ADDENDUM

NO.1

This addendum should be included in and be considered part of the plans and specifications for the River Road Park Bank Stabilization Project. The contractor shall be required to sign an acknowledgement of the receipt of this addendum and submit with their bid.

Contractor Questions:

1. Is a Bathymetric Survey from Riverbank to Riverbank Available?

No, bathymetric survey is not available.

2. Does Sheets SBXS01-SBXS26 Represent Current Conditions?

Cross-sections on the bank sheets are based on best available data at the time of design and represent conditions based on survey dated 5/24/2021 which includes the park area and embankment to the water level. Data below the water level was supplemented with 2011 LiDAR (which was taken when the Cibolo Creek was nearly empty).

3. What is the Elevation of the Downstream Dam?

1382.00' – according to SARA hydraulic model. Survey of the dam was not obtained for this project.

4. What is the Normal Water Surface Elevation

The water surface elevation varies as you move from upstream to downstream of the embankment and depends on time of year and rainfall. The dam elevation of 1382.00' could be used as a typical water surface elevation.

5. Can the Off Site Staging Areas be Utilized for Laydown (Is the Staging Area Located within the 100 year Floodplain)

Both off site staging areas can be used for laydown areas, stage 1 area is in the 100 yr. floodplain.

6. Can the Grading and Stabilization Required for the Haul Road be Left in Place

Sheet G3 – Construction Sequence, Part C.3 indicated restoring access roads as part of Demobilization.

7. Can the Excavated Alluvial Material be Utilized behind the Rock Sill

Yes.

8. Will the Onsite Material Accommodate the Project Fill Requirements? Will the Project Require Imported Fill?

Project will require approximately 121 cubic yards of fill, which will need to be imported.

9. Will the Onsite Material Accommodate the Project Topsoil Requirements? Will the Project Require Imported Topsoil?

Onsite material should accommodate the topsoil requirements. Per specification 02260, stripping and segregating of topsoil will be required and should be sufficient to replace material; however

some material may need to be imported as part of the additional 121 cubic yards referred to in question 9 if segregation cannot yield the appropriate amount of material.

10. Please Provide Detail for Willows Required in Live Staking

Sheet G3 – Construction Sequence, Part B.3 mentions willows and live staking. However, no live staking is called for on the plans or in the specs. Disregard note, the final construction plans will remove any reference to live staking.

11. Can Cibolo Creek be Dewatered between the Upstream and Downstream Dams

Section 01000 – General Requirements, Dewatering states:

The Contractor shall be responsible for dewatering as required to facilitate construction in accordance with the plans, specifications, and geotechnical report recommendations. The Contractor is to coordinate with the City regarding the methodology, placement and timing of dewatering.

12. Will Permits be Required for Water Diversion

No permit required, the City has submitted both the Floodplain Development Permit and Grading Permit for project.

13. How will the Aquatic Life be Relocated

No need to relocate aquatic life

14. Please Reference the Geotechnical Report Bore # B-1. What Elevation is Rock Expected to be Encountered? Can a Typical Footing Depth be Determined for Bidding Purposes?

For bidding purposes use 18 ft. for footing depth

15. Please See Sheet SB8 Section: Concrete Walk with Toe Down. Will the Walk be Required to be Placed Directly on Bedrock?

No, the walk will be placed above the proposed pipes as shown on Pipe culvert detail.

16. Please See Sheet S2.1 Section: Pier Conc. Connection. Will the Underlying Clay be Required to be Removed to a Depth until Reaching Rock

Yes

17. Please See Sheet S2.2 Detail: Footing. Will the Boardwalk Footings be Required to Penetrate 3' into Rock

Yes

18. Please Provide the Size of Boardwalk Beam B4.

Beam B4 size is given in detail 2/S2.2

19. Please see Sheet SB1 and SB8. What is the Length of the Corrugated Pipe and How Many Corrugated Pipes are to be Installed? What are the New Corrugated Pipe(s) to be Tied into?

Length is 14-ft. Per sheet SB1, three (3) 12" culverts to be installed at the elevations noted.

20. In General Note 4. Can the Offsite Stockpile Areas be Utilized for Laydown?

No

21. Can the Areas Outside the Limits of Construction Following Dewatering be Accessed.

Dewatering is limited to the area adjacent to the project.

22. How Many Cubic Feet per Second, CFS, can be Displaced Downstream During Dewatering?

There is no required discharge rate associated with the project. It is recommended to utilize a minimum rate to dewater Cibolo Creek enough to access the LOD, do not pump the creek dry,

there is sufficient room to allow for sufficient water for existing aquatic life. Additionally, the pumps should be easily removed in the event of storms.

23. Will each Section of Rock Sill Required Termination Boulders on either Side of the Sill?
Please see Sheets SB1-SB5 and Detail SB6.

Yes, each section should have termination boulders on either side

24. A revised bid form was uploaded to documents to include Item 7 for quantity of fill material for project

A spreadsheet was added to include the estimated quantity of fill material of 121 CY

25. Additional information regarding borings (question 14)

Marl was encountered at approximately 4 ft below existing grade

Geologic map indicates that site is generally underlain by Glen Rose limestone formation

Engineer recommends contractor to excavate test pits to get clearer picture

Depth to limestone will vary, especially as you get closer to the creek

26. Please see Sheet S2.1 Section 4 note Replace underlaying clay to a depth until reaching rock by compacted crushed limestone select fill. The compacted select fill should extend a min. of 3'-0" outside the structure as recommended by geotechnical report. Please see Sheet S2.0 Toe Beam for Large and Small Fishing Piers required lengths. This large extent of excavation required for the compacted select fill requirements appears to be in conflict with the existing tree roots. How should this detail be captured for bidding purposes?

For the purposes of bidding, assume the required for the compacted select fill requirements is not in conflict. During construction, an arborist will be available to identify tree root conflicts and work with the contractor to resolve the conflicts.

27. Is offsite excavation a bid item for earthwork?

Offsite excavation is included as Bid Item 6.

28. Is this a Lump Sum or Unit Price Project?

Lump Sum

29. What is the Engineer's Estimate?

Not available for bidding

30. How is Zone 4 Paid?

Zone 4 is included under Bid Items 13, 14, and 15

31. Who is Paying for Testing?

City pays for testing, if an item does not pass testing, contractor is responsible for subsequent testing until item meets specification

32. Does the Bid Form Items Equal the Total Sum of the Bid Price?

Yes

33. Is Planting Soil Incidental Item?

Yes

34. Should Topsoil be a Pay Item?

Onsite material should accommodate the topsoil requirements. Per specification 02260, stripping and segregating of topsoil will be required and should be sufficient to replace material; however

some material may need to be imported as part of the additional 121 cubic yards referred to in question 8 (of addendum 1) if segregation cannot yield the appropriate amount of material.

35. Please Quantify Transplanted Vegetation?

There is no transplanted vegetation for this project

36. Who is Responsible for Damages following a Flooding Event?

Contractor is responsible for damages following a flooding event until the project is complete and final acceptance has been issued.

37. Is Temp. Irrigation Required?

Yes, for bank stabilization plantings

Note: Addenda Acknowledgement Form for Addendum 1 is attached herein. This form must be signed and submitted with the bid package.

RECEIPT OF ADDENDUM NUMBER NO. 1 IS HEREBY ACKNOWLEDGED FOR PLANS AND SPECIFICATIONS FOR CONSTRUCTION OF River Road Park Bank Stabilization Project

FOR WHICH BIDS WILL BE OPENED ON Tuesday, July 18, 2023 at 2:00 p.m. CST.

THIS ACKNOWLEDGEMENT MUST BE SIGNED AND RETURNED WITH THE BID PACKAGE.

Company Name: AGAVE DESIGN STUDIO

Address: 9 SPANISH ARCS RD

City/State/Zip Code: BOERNE TEXAS 78006

Date: 7/18/23


Signature

KAITA BRAY
Print Name/Title

Agere Design Studio

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

ARTICLE 5 - BASIS OF BID

5.1 Pursuant to the foregoing Sec I - ADVERTISEMENT FOR BID and SEC II - INSTRUCTIONS TO BIDDERS, the bidder will complete the Work in accordance with the Contract Documents for the following prices(s):

Item	Tech. Spec. Section Number	QTY	Unit	Description	Unit Price	Total
GENERAL CONDITIONS						\$ 152,900.00
1		1	LS	Surety Bonds	\$ 44,200.00	\$ 44,200.00
2		1	LS	Construction Stakeout	\$ 21,600.00	\$ 21,600.00
3	01060	1	LS	Mobilization	\$ 59,000.00	\$ 59,000.00
4	02110	1	LS	Site Clearing	\$ 8,900.00	\$ 8,900.00
5	02514	4	MO	Barricades, Signs, and Traffic Handling	\$ 4,800.00	\$ 19,200.00
EARTHWORK						\$ 84,292.00
6	02200	1	LS	Earthwork (Off Site Excavation)	\$ 78,000.00	\$ 78,000.00
7	02200	121	CY	Fill	\$ 52.00	\$ 6,292.00
EROSION CONTROL						\$ 37,050.00
8	02270	70	SY	Stabilized Construction Entrance	\$ 132.00	\$ 9,240.00
9	02270	725	LF	Silt Fence	\$ 13.20	\$ 9,570.00
10	02930	1600	LF	Level 1 Protective Fencing	\$ 11.40	\$ 18,240.00
STREAM BANK STABILIZATION						\$ 577,742.50
11	300	870	LF	Rock Sill with Bank Grading	\$ 618.75	\$ 538,312.50
12	02270	1500	SY	Coir Fiber Matting	\$ 10.80	\$ 16,200.00
13	02930	0.2	AC	Zone 4 - Temporary Seeding	\$ 20,400.00	\$ 4,080.00
14	02930	0.2	AC	Zone 4 - Stabilization Seeding	\$ 38,250.00	\$ 7,650.00
15	02930	0.2	AC	Zone 4 - Stabilization Vegetation	\$ 57,500.00	\$ 11,500.00
PIPE CULVERT						\$ 27,587.40
16	02423	3	EA	12" galvanized steel pipes	\$ 4,375.00	\$ 13,125.00
17		20	CY	12" Rip Rap	\$ 132.00	\$ 2,640.00
18		1	LS	Demolition/Haul Off Concrete	\$ 3,240.00	\$ 3,240.00
19		144	SF	Sidewalk & Existing Pipes Concrete Sidewalk	\$ 59.60	\$ 8,582.40
STRUCTURAL						\$ 924,043.60
20		255	LF	Boardwalk	\$ 1,968.07	\$ 501,857.85
21		50	LF	Small Fishing Pier	\$ 4,245.19	\$ 212,259.50
22		40	LF	Large Fishing Pier	\$ 4,245.19	\$ 169,807.50
23		495	SF	Demolition/Haul Off Concrete Sidewalk	\$ 18.75	\$ 9,281.25
24		689	SF	Concrete Sidewalk	\$ 29.50	\$ 20,325.50
25		96	LF	Toedown	\$ 109.50	\$ 10,512.00

				IRRIGATION		\$ 59,199.62
26		100	LF	PVC Main Supply Line - MOSTLY EXISTING	\$ 35.00	\$ 3,500.00
27		4438	LF	PVC Lateral Line	\$ 2.30	\$ 10,207.40
28		236	EA	4" Pop-up Sprinkler	\$ 31.25	\$ 7,375.00
29		13	EA	Drip Zone Valve	\$ 637.50	\$ 8,287.50
30		45894	SF	Drip Irrigation Tubing	\$ 0.38	\$ 17,439.72
31		4	EA	Electric Valve	\$ 375.00	\$ 1,500.00
32		1	EA	ACC2 Controller	\$ 3,062.50	\$ 3,062.50
33		1	EA	Solar Sync	\$ 312.50	\$ 312.50
34		17	EA	ICD Decoder on Stake	\$ 300.00	\$ 5,100.00
35		7	EA	ICD Sensor Decoder	\$ 345.00	\$ 2,415.00
				PLANTING		\$ 332,921.32
36	02930	20	EA	Lindheimer Muhly	\$ 39.00	\$ 780.00
37	02930	195	EA	Inland Sea Oats	\$ 39.00	\$ 7,605.00
38	02930	164	EA	Copper Iris	\$ 39.00	\$ 6,396.00
39	02930	31	EA	Little Bluestem	\$ 39.00	\$ 1,209.00
40	02930	19	EA	Indian Grass	\$ 39.00	\$ 741.00
41	02930	105	EA	Plateau Goleneye	\$ 39.00	\$ 4,095.00
42	02930	160	EA	Zig Zag Iris	\$ 39.00	\$ 6,240.00
43	02930	1900	EA	Cedar Sedge	\$ 3.75	\$ 7,125.00
44	02930	100	EA	Sideoats Grama	\$ 15.00	\$ 1,500.00
45	02930	106	EA	Arapaho Muhly	\$ 39.00	\$ 4,134.00
46	02930	9	EA	Society Garlic	\$ 39.00	\$ 351.00
47	02930	252	EA	Mexican Feather Grass	\$ 39.00	\$ 9,828.00
48	02930	50	EA	Mountain Pea	\$ 3.75	\$ 187.50
49	02930	750	EA	New Gold Lantana	\$ 3.75	\$ 2,812.50
50	02930	5945	EA	Straggler Daisy	\$ 39.00	\$ 231,855.00
51	02930	148	EA	Lantana Purple Trailing	\$ 3.75	\$ 555.00
52	02930	5	EA	Dwarf Wax Myrtle	\$ 39.00	\$ 195.00
53	02930	131	EA	Turks Cap	\$ 39.00	\$ 5,109.00
54	02930	152	EA	Argarita	\$ 39.00	\$ 5,928.00
55	02930	209	EA	Blackfoot Daisy	\$ 39.00	\$ 8,151.00
56	02930	202	EA	San Angelo Yucca	\$ 39.00	\$ 7,878.00
57	02930	122	EA	Red Yucca	\$ 39.00	\$ 4,758.00
58	02930	13352	SF	Zoysia	\$ 1.16	\$ 15,488.32
				Base Bid Total		\$ 2,195,736.44

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

ARTICLE 6 – TIME OF COMPLETION

- 6.1 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.2 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.1 The following documents are submitted with and made a condition of this Bid:
 - A. Required Bid security;
 - B. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - C. Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - D. Required Bidder Qualification Statement with supporting data; and

ARTICLE 8 – DEFINED TERMS

- 8.1 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

ARTICLE 9 – BID SUBMITTAL

BIDDER: [Indicate correct name of bidding entity]

Agave Design Studio LLC

By:

[Signature]



[Printed name] Keith J. Brady

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature]



[Printed name] Keith J. Brady

Title: President

Submittal Date: _____

Address for giving notices:

Agave Design Studio LLC

9 Spanish Pass Boerne Texas 78006

Telephone Number: 830-249-4016 / 210-365-4819

Fax Number: _____

Contact Name and e-mail address:

Keith Brady

keith@agaveds.com

Bidder's License No.: _____

(where applicable)

NOTE TO USER: *Use in those states or other jurisdictions where applicable or required.*

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

QUALIFICATIONS STATEMENT

**THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE
EXTENT PERMITTED BY LAWS AND REGULATIONS**

1. **SUBMITTED BY:** Agave Design Studio LLC

Official Name of Firm: Agave Design Studio LLC

Address: 9 Spanish Pass Road, Boerne, Texas 78006

2. **SUBMITTED TO:** City of Boerne

3. **SUBMITTED FOR:** River Road Park Bank Stabilization

Owner:

Project Name: River Road Park Bank Stabilization

TYPE OF WORK:

4. **CONTRACTOR'S CONTACT INFORMATION**

Contact Person: Keith J. Brady

Title: President

Phone: 210-365-4819 / 830-249-4016

Email: keith@agaveds.com

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

5. AFFILIATED COMPANIES:

Name: Brady Lawn & Landscape LLC- Previous Company

Address: 9 Spanish Pass Road, Boerne, Texas 78006

6. TYPE OF ORGANIZATION:

☐

SOLE PROPRIETORSHIP

Name of Owner: _____

Doing Business As: _____

Date of Organization: _____

☐

PARTNERSHIP

Date of Organization: _____

Type of Partnership: _____

Name of General Partner(s): _____

☐

CORPORATION

State of Organization: _____

Date of Organization: _____

Executive Officers: _____

- President: _____

- Vice President(s): _____

- Treasurer: _____

- Secretary: _____

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT



LIMITED LIABILITY COMPANY

State of Organization:

Texas

Date of Organization:

12/21/2018

Members:

Keith J. Brady



JOINT VENTURE

Sate of Organization:

Date of Organization:

Form of Organization:

Joint Venture Managing Partner

- Name:

- Address:

Joint Venture Managing Partner

- Name:

- Address:

7. LICENSING

Jurisdiction:

Type of License:

License Number:

Jurisdiction:

Type of License:

License Number:

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

8. CERTIFICATIONS

CERTIFIED BY:

Disadvantage Business Enterprise: _____

Minority Business Enterprise: _____

Woman Owned Enterprise: _____

Small Business Enterprise: _____

Other (): _____

9. BONDING INFORMATION

Bonding Company: _____

Address: _____

Bonding Agent: Mr. Chris Hughtston, CIC

Address: Hughtston Insurance Agency

P.O. Box 8550, Brownsville, Texas 78526

Contact Name: Mr. Chris Hughtston, CIC

Phone: (956) 214-4913

Aggregate Bonding Capacity: _____

Available Bonding Capacity as of date of this submittal: _____

10. FINANCIAL INFORMATION

Financial Institution: Frost Bank - Boerne

Address: 1300 South Main Street

Boerne, Texas 78006

Account Manager: Kevin Thompson

Phone: 830-249-2251

INCLUDE AS AN ATTACHMENT AN AUDITED BALANCE SHEET FOR EACH OF THE LAST 3 YEARS

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CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

11. CONSTRUCTION EXPERIENCE:

Current Experience:

List on **Schedule A** all uncompleted projects currently under contract (If Joint Venture list each participant's projects separately).

Previous Experience:

List on **Schedule B** all projects completed within the last 5 Years (If Joint Venture list each participant's projects separately).

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

☐ YES ☒ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

☐ YES ☒ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

☐ YES ☒ NO

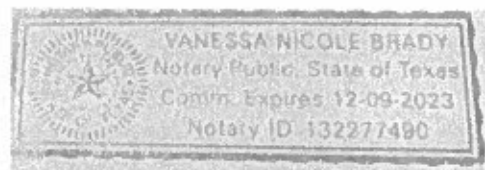
If YES, attach as an Attachment details including Project Owner's contact information.

CITY OF BOERNE RIVER ROAD PARK BANK STABILIZATION PROJECT

I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HERewith, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: Agave Design Studio LLC
 BY: Keith J. Brady
 TITLE: President
 DATED: July 18, 2023

NOTARY ATTEST:



SUBSCRIBED AND SWORN TO BEFORE ME
 THIS 18th DAY OF July, 20 23

NOTARY PUBLIC - STATE OF Texas
 MY COMMISSION EXPIRES: 12.09.2023

REQUIRED ATTACHMENTS

1. Schedule A (Current Experience).
2. Schedule B (Previous Experience).
3. Schedule C (Major Equipment).
4. Audited balance sheet for each of the last 3 years for firm named in Section 1.
5. Evidence of authority for individuals listed in Section 7 to bind organization to an agreement.
6. Resumes of officers and key individuals (including Safety Officer) of firm named in Section 1.
7. Required safety program submittals listed in Section 13.
8. Additional items as pertinent.

CURRENT EXPERIENCE

SCHEDULE A

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
Charis Park	Name: Charis Collective Address: Jess Lowry 291 Emporia Blvd. San Antonio 78209 Telephone: 210-824-4568	Name: Coral Studio Company: 1432 S.St.Mary's San Antonio 78210 Telephone: 210-963-7447	May 10, 2023	General Contractor for park	Started	1.5 MIL
Liberte Amenity Center	Name: Starlight Homes of Texas Kyle Lents Address: 17319 San Pedro Ste140 San Antonio 78232 Telephone: 210-632-0753	Name: Agave Design Studio LLC Company: 9 Spanish Pass Road Boerne, Texas 78006 Telephone: 830-249-4016	Dec.12, 2022	Design & General Contractor for Amenity Center	in progress	1.41 MIL
Frieden Common Areas	Name: Skip Preble CRE,MAI,CCIM Land Analytics, LLC Address: 133 Otto Echardt Fredericksburg, TX 78264 Telephone: 832-771-1181	Name: Agave Design Studio LLC Company: 9 Spanish Pass Road Boerne, Texas 78006 Telephone: 830-249-4016		General Contractor	in progress	\$699,570
Waldanger Entry Monuments	Name: Starlight Homes of Texas Kyle Lents Address: 17319 San Pedro Ste140 San Antonio 78232 Telephone: 210-632-0753	Name: Agave Design Studio LLC Company: 9 Spanish Pass Road Boerne, Texas 78006 Telephone: 830-249-4016		Design/General Contractor		\$900,000
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

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SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
Ventana Amenity Center Spring Branch, Texas	Name: TwoSeventySeven LTD Address: Mr. Trey Marsk 8023 Vantage Drive, #1200 San Antonio 78230 Telephone:	Name: Agave Design Studio LLC 9 Spanish Pass Road Boerne, Texas 78006 Telephone: 830-249-4016	Nov. 2020	General Contractor		\$788,000
Mustang Oaks Entry & Monument San Antonio, Texas	Name: Starlight Homes of Texas Kyle Lents Address: 17319 San Pedro Ste 140 San Antonio 78232 Telephone: 210-632-0753	Name: Agave Design Studio LLC 9 Spanish Pass Road Boerne, Texas 78006 Telephone: 830-249-4016	March 2023	Design/ General Contractor		\$694,00
The Davenport Mult Family Facility Austin, Texas	Name: The Marcus Organization Rick Scalia Address: 155 Schmidt Blv Farmington, NY 1135 Telephone: (831) 231-5041	Name: Company: Telephone:	June 4, 2020	Amenity Pool & Perimeter Fence		\$461,000
Exeter Place Apartments San Antonio, Texas	Name: The Marcus Organization Rick Scalia Address: 155 Schmidt Blv Farmington, NY 1135 Telephone: (831) 231-5041	Name: Agave Design Studio LLC 9 Spanish Pass Road Boerne, Texas 78006 Telephone: 830-249-4016	Dec. 9, 2019	Landscape & Irrigation		\$329,000
Boerne 46 Gateway (performed under Brady Lawn & Landscape	Name: Mr Paul Barwick Address: City of Boerne Telephone:	Name: Terra Design Group Company: 2015 NE Loop 41 San Antonio, Texas Telephone:		Monument & Surrounding Landscape		
Kinder Park-Boerne (performed under Brady Lawn & Landscape	Name: Mr. Danny Zinke Address: City of Boerne- Parks & Rec Telephone:	Name: Brent Luck Design Company: Telephone:		Park remodel		
Patrick Heath Library/Amphitheater Boerne, Texas (Performed under B rady Lawn & Landscape	Name: Mr Paul Barwick Address: City of Boerne Telephone:	Name: Terra Design Group Company: 2015 NE Loop 41 San Antonio, Texas Telephone:		Amphitheater Construction		

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SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
Veteran's Park (Performed under Brady Lawn & Landscape	Name: Mr. Danny Zinke Address: City of Boerne- Parks & Rec Telephone:	Name: Brent Luck Design Company: Telephone:		Park remodel		
Libere Monuments /Fence/ Landscape All Phases Converse , Texas	Name: Starlight Homes of Texas Address: Kyle Lents 17319 San Pedro Ste140 San Antonio 78232 Telephone: 210-632-0753	Name: Agave Design Studio LLC Company: 9 Spanish Pass Road Boerne, Texas 78006 Telephone: 830-249-4016		Fencing. landscape Monuments		\$723,00
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

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Parks & Recreation Department

CHANGE ORDER

Change Order No: 1	Project: River Road Park Bank Stabilization
Date: 12/20/2023	Contractor: Agave Design Studio

IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT, DATED 9/6/2023 BETWEEN CITY OF BOERNE, OWNER, AND AGAVE DESIGN STUDIO, LLC, CONTRACTOR, THE CONTRACTOR IS HEREBY DIRECTED TO MAKE ADDITIONS OR ALTERATIONS IN THE WORK WITH DETAILS AND COSTS AS FOLLOWS. ANY COMPENSATION PAID IN CONJUNCTION WITH THE TERMS OF THIS CHANGE ORDER SHALL COMPRISE TOTAL COMPENSATION DUE THE CONTRACTOR FOR THE WORK OR THE CHANGE DEFINED IN THIS CHANGE ORDER. BY SIGNING THIS CHANGE ORDER, THE CONTRACTOR ACKNOWLEDGES THAT THE STIPULATED COMPENSATION INCLUDES PAYMENT FOR THE WORK OF CHANGE PLUS ALL PAYMENT FOR THE INTERRUPTION OF SCHEDULES, STOP WORK ORDERS, EXTENDED OVERHEAD, DELAY, OR ANY OTHER IMPACT, CLAIM OR RIPPLE EFFECT, AND BY SIGNING SPECIFICALLY WAIVES ANY RESERVATION OR CLAIM FOR ADDITIONAL COMPENSATION IN RESPECT TO THE SUBJECT OF THIS CHANGE ORDER. EXCEPT AS MODIFIED BY CHANGE ORDER, ALL WORK PERFORMED UNDER THIS CHANGE ORDER SHALL BE COMPLETED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

DESCRIPTION OF WORK TO BE ADDED OR DELETED: Work to be added includes:

ProLake (Keeton) Aeration System (PL4 Cab- 230V)

4 double rocking piston 1/2 HP USA made compressor, freestanding ventilated cabinet, 1000' 1/2" weighted airline, timer, and 10 ea. double 9 Inch Diffusers. Included is the electrical connection to existing service panel at back of public restroom and all necessary pvc piping, joints, ball valves, and valve boxes required for turnkey installation.

JUSTIFICATION FOR CHANGE: Aerators recommended by City Council & Staff for the improvement of water quality and aquatic species habitat 16/2 in Cibolo Creek at River Road Park.

ESTIMATED COST OR CREDIT TO COB:	\$ \$38,000
<i>ADJUSTMENT IN PAYMENT SHALL BE AS FOLLOWS:</i>	
THE ORIGINAL CONTRACT SUM WAS:	\$ 2,195,736.44
THE NET CHANGE BY PREVIOUS CHANGE ORDER(S):	\$ 0
THE CONTRACT SUM PRIOR TO THIS CHANGE ORDER WAS:	\$ 2,195,736.44
THE NET CONTRACT SUM INCLUDING THIS CHANGE ORDER IS:	\$ 2,233,736.44

PERCENT INCREASE OF THE CONTRACT AS OF THIS CHANGE ORDER:	1.7 %
THE CONTRACT TIME WILL BE INCREASED BY:	10 CALENDAR DAYS
THE DATE OF COMPLETION AS OF THE DATE OF THIS CHANGE ORDER IS:	3/16/2024



Parks & Recreation Department

CHANGE ORDER

ACCEPTED:


(AUTHORIZED REPRESENTATIVE)

12/20/23
DATE

NAME & TITLE: Keith Brady, CEO, Agave Design Studio
(PRINT)


RECOMMENDED:

(DESIGN CONSULTANT, IF APPLICABLE)

DATE

NAME & TITLE: NA
(PRINT)

APPROVED:


Lissette Jimenez, Director of Parks + Re
(COB CONTRACTING OFFICER)

12/20/23

DATE



Parks & Recreation Department

CHANGE ORDER

Change Order No: 2	Project: River Road Park Bank Stabilization
Date: 12/22/2023	Contractor: Agave Design Studio

IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT, DATED 9/6/2023 BETWEEN CITY OF BOERNE, OWNER, AND AGAVE DESIGN STUDIO, LLC, CONTRACTOR, THE CONTRACTOR IS HEREBY DIRECTED TO MAKE ADDITIONS OR ALTERATIONS IN THE WORK WITH DETAILS AND COSTS AS FOLLOWS. ANY COMPENSATION PAID IN CONJUNCTION WITH THE TERMS OF THIS CHANGE ORDER SHALL COMPRISE TOTAL COMPENSATION DUE THE CONTRACTOR FOR THE WORK OR THE CHANGE DEFINED IN THIS CHANGE ORDER. BY SIGNING THIS CHANGE ORDER, THE CONTRACTOR ACKNOWLEDGES THAT THE STIPULATED COMPENSATION INCLUDES PAYMENT FOR THE WORK OF CHANGE PLUS ALL PAYMENT FOR THE INTERRUPTION OF SCHEDULES, STOP WORK ORDERS, EXTENDED OVERHEAD, DELAY, OR ANY OTHER IMPACT, CLAIM OR RIPPLE EFFECT, AND BY SIGNING SPECIFICALLY WAIVES ANY RESERVATION OR CLAIM FOR ADDITIONAL COMPENSATION IN RESPECT TO THE SUBJECT OR THIS CHANGE ORDER. EXCEPT AS MODIFIED BY CHANGE ORDER, ALL WORK PERFORMED UNDER THIS CHANGE ORDER SHALL BE COMPLETED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

DESCRIPTION OF WORK TO BE ADDED OR DELETED: Work to be added includes:

JUSTIFICATION FOR CHANGE: The rainbird controller allows for park staff the ability to add this site to existing cloud monitoring, remote control and match same irrigation system controls as other current city sites...

ESTIMATED COST OR CREDIT TO COB:	\$ 2,800.00
<i>ADJUSTMENT IN PAYMENT SHALL BE AS FOLLOWS:</i>	
THE ORIGINAL CONTRACT SUM WAS:	\$ 2,195,736.44
THE NET CHANGE BY PREVIOUS CHANGE ORDER(S):	\$ 38,000.00
THE CONTRACT SUM PRIOR TO THIS CHANGE ORDER WAS:	\$ 2,233,736.44
THE NET CONTRACT SUM INCLUDING THIS CHANGE ORDER IS:	\$ 2,236,536.44
PERCENT INCREASE OF THE CONTRACT AS OF THIS CHANGE ORDER:	1.85 %
THE CONTRACT TIME WILL BE INCREASED BY:	0 CALENDAR DAYS
THE DATE OF COMPLETION AS OF THE DATE OF THIS CHANGE ORDER IS:	3/18/2024



Parks & Recreation Department

CHANGE ORDER

ACCEPTED:	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> (AUTHORIZED REPRESENTATIVE)	<div style="border-bottom: 1px solid black; margin-bottom: 5px;">02/06/2024</div> DATE
NAME & TITLE:	<div style="border-bottom: 1px solid black; margin-bottom: 5px;">Keith Brady, CEO, Agave Design Studio</div> (PRINT)	

RECOMMENDED:	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> (DESIGN CONSULTANT, IF APPLICABLE)	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> DATE
NAME & TITLE:	<div style="border-bottom: 1px solid black; margin-bottom: 5px; text-align: center;">NA</div> (PRINT)	

APPROVED:	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"> </div>	
	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"> Lissette Jimenez Director of Parks + Parks </div> <div style="display: flex; justify-content: space-between;"> (COB CONTRACTING OFFICER) 02/07/2024 </div> <div style="display: flex; justify-content: space-between;"> DATE </div>	



Parks & Recreation Department

CHANGE ORDER

Change Order No: 3	Project: River Road Park Bank Stabilization
Date: 1/29/2024	Contractor: Agave Design Studio

IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT, DATED 9/6/2023 BETWEEN CITY OF BOERNE, OWNER, AND AGAVE DESIGN STUDIO, LLC, CONTRACTOR, THE CONTRACTOR IS HEREBY DIRECTED TO MAKE ADDITIONS OR ALTERATIONS IN THE WORK WITH DETAILS AND COSTS AS FOLLOWS. ANY COMPENSATION PAID IN CONJUNCTION WITH THE TERMS OF THIS CHANGE ORDER SHALL COMPRISE TOTAL COMPENSATION DUE THE CONTRACTOR FOR THE WORK OR THE CHANGE DEFINED IN THIS CHANGE ORDER. BY SIGNING THIS CHANGE ORDER, THE CONTRACTOR ACKNOWLEDGES THAT THE STIPULATED COMPENSATION INCLUDES PAYMENT FOR THE WORK OF CHANGE PLUS ALL PAYMENT FOR THE INTERRUPTION OF SCHEDULES, STOP WORK ORDERS, EXTENDED OVERHEAD, DELAY, OR ANY OTHER IMPACT, CLAIM OR RIPPLE EFFECT, AND BY SIGNING SPECIFICALLY WAIVES ANY RESERVATION OR CLAIM FOR ADDITIONAL COMPENSATION IN RESPECT TO THE SUBJECT OR THIS CHANGE ORDER. EXCEPT AS MODIFIED BY CHANGE ORDER, ALL WORK PERFORMED UNDER THIS CHANGE ORDER SHALL BE COMPLETED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

DESCRIPTION OF WORK TO BE ADDED OR DELETED: Work to be added includes:

JUSTIFICATION FOR CHANGE: The addition of a concrete curb in place of Steel bed edging is to make the landscape safer and reduce maintenance time

ESTIMATED COST OR CREDIT TO COB:	\$ 10,600.00
<i>ADJUSTMENT IN PAYMENT SHALL BE AS FOLLOWS:</i>	
THE ORIGINAL CONTRACT SUM WAS:	\$ 2,195,736.44
THE NET CHANGE BY PREVIOUS CHANGE ORDER(S):	\$ 40,800.00
THE CONTRACT SUM PRIOR TO THIS CHANGE ORDER WAS:	\$ 2,236,536.44
THE NET CONTRACT SUM INCLUDING THIS CHANGE ORDER IS:	\$ 2,247,136.44

PERCENT INCREASE OF THE CONTRACT AS OF THIS CHANGE ORDER:	2.34 %
THE CONTRACT TIME WILL BE INCREASED BY:	2 CALENDAR DAYS
THE DATE OF COMPLETION AS OF THE DATE OF THIS CHANGE ORDER IS:	3/20/2024



Parks & Recreation Department

CHANGE ORDER

ACCEPTED:	_____ (AUTHORIZED REPRESENTATIVE)	12/22/2023 _____ DATE
NAME & TITLE:	Keith Brady, CEO, Agave Design Studio _____ (PRINT)	

RECOMMENDED:	_____ (DESIGN CONSULTANT, IF APPLICABLE)	_____ DATE
NAME & TITLE:	NA _____ (PRINT)	

APPROVED:	_____ _____ (COB CONTRACTING OFFICER)	02/07/2024 _____ DATE
Director of Parks & Rec		



Parks & Recreation Department

CHANGE ORDER

Change Order No: 4	Project: River Road Park Bank Stabilization
Date: 1/31/2024	Contractor: Agave Design Studio

IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT, DATED 9/6/2023 BETWEEN CITY OF BOERNE, OWNER, AND AGAVE DESIGN STUDIO, LLC, CONTRACTOR, THE CONTRACTOR IS HEREBY DIRECTED TO MAKE ADDITIONS OR ALTERATIONS IN THE WORK WITH DETAILS AND COSTS AS FOLLOWS. ANY COMPENSATION PAID IN CONJUNCTION WITH THE TERMS OF THIS CHANGE ORDER SHALL COMPRISE TOTAL COMPENSATION DUE THE CONTRACTOR FOR THE WORK OR THE CHANGE DEFINED IN THIS CHANGE ORDER. BY SIGNING THIS CHANGE ORDER, THE CONTRACTOR ACKNOWLEDGES THAT THE STIPULATED COMPENSATION INCLUDES PAYMENT FOR THE WORK OF CHANGE PLUS ALL PAYMENT FOR THE INTERRUPTION OF SCHEDULES, STOP WORK ORDERS, EXTENDED OVERHEAD, DELAY, OR ANY OTHER IMPACT, CLAIM OR RIPPLE EFFECT, AND BY SIGNING SPECIFICALLY WAIVES ANY RESERVATION OR CLAIM FOR ADDITIONAL COMPENSATION IN RESPECT TO THE SUBJECT OR THIS CHANGE ORDER. EXCEPT AS MODIFIED BY CHANGE ORDER, ALL WORK PERFORMED UNDER THIS CHANGE ORDER SHALL BE COMPLETED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

DESCRIPTION OF WORK TO BE ADDED OR DELETED: Work to be added includes:

JUSTIFICATION FOR CHANGE: Remove damaged flatwork and replace with new poured in place concrete to match existing flatwork, this will correct ADA conflicts and remove hazards in walk ways....

ESTIMATED COST OR CREDIT TO COB:	\$ 53,675.00
<i>ADJUSTMENT IN PAYMENT SHALL BE AS FOLLOWS:</i>	
THE ORIGINAL CONTRACT SUM WAS:	\$ 2,195,736.44
THE NET CHANGE BY PREVIOUS CHANGE ORDER(S):	\$ 51,400.00
THE CONTRACT SUM PRIOR TO THIS CHANGE ORDER WAS:	\$ 2,247,136.44
THE NET CONTRACT SUM INCLUDING THIS CHANGE ORDER IS:	\$ 2,300,811.44
PERCENT INCREASE OF THE CONTRACT AS OF THIS CHANGE ORDER:	4.78 %
THE CONTRACT TIME WILL BE INCREASED BY:	10 CALENDAR DAYS
THE DATE OF COMPLETION AS OF THE DATE OF THIS CHANGE ORDER IS:	3/31/2024



Parks & Recreation Department

CHANGE ORDER

ACCEPTED:	_____ (AUTHORIZED REPRESENTATIVE)	1/31/2024 _____ DATE
NAME & TITLE:	Keith Brady, CEO, Agave Design Studio _____ (PRINT)	

RECOMMENDED:	_____ (DESIGN CONSULTANT, IF APPLICABLE)	_____ DATE
NAME & TITLE:	NA _____ (PRINT)	

APPROVED:	_____	
	Lissette Jimenez Parks + Rec Director _____ (COB CONTRACTING OFFICER)	02/07/2024 _____ DATE



Parks & Recreation Department

CHANGE ORDER

Change Order No: 5	Project: River Road Park Bank Stabilization
Date: 2/01/2024	Contractor: Agave Design Studio

IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT, DATED 9/6/2023 BETWEEN CITY OF BOERNE, OWNER, AND AGAVE DESIGN STUDIO, LLC, CONTRACTOR, THE CONTRACTOR IS HEREBY DIRECTED TO MAKE ADDITIONS OR ALTERATIONS IN THE WORK WITH DETAILS AND COSTS AS FOLLOWS. ANY COMPENSATION PAID IN CONJUNCTION WITH THE TERMS OF THIS CHANGE ORDER SHALL COMPRISE TOTAL COMPENSATION DUE THE CONTRACTOR FOR THE WORK OR THE CHANGE DEFINED IN THIS CHANGE ORDER. BY SIGNING THIS CHANGE ORDER, THE CONTRACTOR ACKNOWLEDGES THAT THE STIPULATED COMPENSATION INCLUDES PAYMENT FOR THE WORK OF CHANGE PLUS ALL PAYMENT FOR THE INTERRUPTION OF SCHEDULES, STOP WORK ORDERS, EXTENDED OVERHEAD, DELAY, OR ANY OTHER IMPACT, CLAIM OR RIPPLE EFFECT, AND BY SIGNING SPECIFICALLY WAIVES ANY RESERVATION OR CLAIM FOR ADDITIONAL COMPENSATION IN RESPECT TO THE SUBJECT OF THIS CHANGE ORDER. EXCEPT AS MODIFIED BY CHANGE ORDER, ALL WORK PERFORMED UNDER THIS CHANGE ORDER SHALL BE COMPLETED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

DESCRIPTION OF WORK TO BE ADDED OR DELETED: Work to be added includes:

JUSTIFICATION FOR CHANGE: Remove silt built up in creek (approx. 7250 tons) bottom from dam to bridge, remove debris from creek banks and haul off, build fish habitat with boulders and large tree trunks


ESTIMATED COST OR CREDIT TO COB:	\$ 92,000.00
<i>ADJUSTMENT IN PAYMENT SHALL BE AS FOLLOWS:</i>	
THE ORIGINAL CONTRACT SUM WAS:	\$ 2,195,736.44
THE NET CHANGE BY PREVIOUS CHANGE ORDER(S):	\$ 105,075.00
THE CONTRACT SUM PRIOR TO THIS CHANGE ORDER WAS:	\$ 2,300,811.44
THE NET CONTRACT SUM INCLUDING THIS CHANGE ORDER IS:	\$ 2,392,311.44

PERCENT INCREASE OF THE CONTRACT AS OF THIS CHANGE ORDER:	8.97 %
THE CONTRACT TIME WILL BE INCREASED BY:	15 CALENDAR DAYS
THE DATE OF COMPLETION AS OF THE DATE OF THIS CHANGE ORDER IS:	4/15/2024

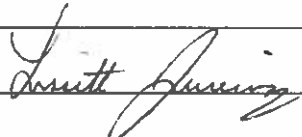


Parks & Recreation Department

CHANGE ORDER

ACCEPTED:	 _____ (AUTHORIZED REPRESENTATIVE)	2/01/2024 _____ DATE
	NAME & TITLE: Keith Brady, CEO, Agave Design Studio _____ (PRINT)	

RECOMMENDED:	_____ (DESIGN CONSULTANT, IF APPLICABLE)	_____ DATE
	NAME & TITLE: NA _____ (PRINT)	

APPROVED:	 _____	
	Lissette Jimenez Director Parks & (COB CONTRACTING OFFICER) Rec _____	02/07/2024 _____ DATE