RESOLUTION 26-R-131

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A SERVICE AGREEMENT FOR ON-CALL CONCRETE SERVICES WITH PROFICIENT CONSTRUCTORS, LLC, WESTHILL PAVING, INC, AND FANAR 1 ENTERPRISES, LLC, AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City staff has solicited and received proposals for on-call concrete services; and

WHEREAS, City staff have determined that Proficient Constructors, LLC, Westhill Paving, Inc., and Fanar 1 Enterprises, LLC is qualified to provide such services for the City; and

WHEREAS, the City staff has determined it is in the best interest of the City and its residents to contract these services; and

WHEREAS, the City Council desires to allow the City Manager to approve and execute the services agreement for on-call concrete services with Proficient Constructors, LLC, Westhill Paving, Inc., and Fanar 1 Enterprises, LLC.

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

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the contract with Proficient Constructors, LLC, Westhill Paving, Inc., and Fanar 1 Enterprises, LLC in substantially the form set forth on Exhibit A ("Service Agreement, Proficient Constructors, LLC"), Exhibit B (Service Agreement, Westhill Paving, Inc.) and Exhibit C ("Service Agreement, Fanar 1 Enterprises, LLC).

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____, 2026.

CITY OF SCHERTZ, TEXAS

_____
Ralph Rodriguez, Mayor

ATTEST:

_____
Sheila Edmondson, City Secretary

Exhibit “A”

Service Agreement, Proficient Constructors, LLC

CITY OF SCHERTZ

SERVICE AGREEMENT

THE STATE OF TEXAS §
§
GUADALUPE COUNTY §

This Service Agreement ("Agreement") is made and entered by and between the City of Schertz, Texas, (the "City") a Texas municipality, and Proficient Constructors, LLC ("Contractor").

Section 1. Duration

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through October 31, 2029 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

Section 2. Scope of Work

(A) Contractor shall perform the Work as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project".

(B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.

(C) The Contractor shall perform its Work for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent Contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation

(A) The Contractor shall be paid in full upon completion of the project or in the manner set forth in Exhibit "A" and as provided herein.

(B) *Billing Period.* Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Contractor's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.

(D) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor.

(1) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

(2) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.

(3) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.

(4) To the extent there is a conflict between this Section and any other language or covenants in this Agreement, this Section 3 shall control.

Section 4. Time of Completion

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination.

(A) Contract Times: Days

The Work is expected to be substantially completed within ____ calendar days after the Notice to Proceed is given ("Substantial Completion")

(B) Liquidated Damages

Contractor and Owner recognize that time is of the essence as stated 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 the Scope of Work, plus any extensions thereof allowed in accordance with the Contract. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Contractor further acknowledges and agrees that, if the Contractor fails to substantially, or cause the Substantial Completion of any portion of the Work within the Contract time, the Owner will sustain actual damages because of such failure. The exact amount of such damage will be difficult to ascertain. Therefore, the Owner and Contractor agree that, if the Contractor shall neglect, fail, or refuse to achieve substantial completion of the Work by the Substantial Completion date, subject to proper extension granted by the Owner, then the Contractor agrees to pay the Owner the sum of **Six hundred dollars ($600.00) per day** for each day in which such Work is not completed, not as penalty, but as liquidated damages, for the damages ("Liquidated Damages") that would be suffered by Owner as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Work as

required herein. The Liquidated Damages shall be in lieu of any and all other damages which may be incurred by the Owner as a result of the failure of Contractor to complete within the Contract Time.

Section 5. Insurance

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. The contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

Workers Compensation Insurance: Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers' liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than $1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than $1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be $2,000,000. This coverage shall protect the public or any person from injury or property damage sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than $2,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least $1,000,000 per occurrence for bodily injury and property damage or split limits of at least $1,000,000 for bodily injury per person per occurrence and $1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

Subcontractor: In the case of any work sublet, the Contractor shall require subcontractor and independent contractors working under the direction of either the Contractor or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Contractor.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

Section 6. Miscellaneous Provisions

(A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement, or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.

(B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.

(C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

(D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

(E) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this

subsection.

(F) *Conflict of Terms*.

Scope of work:

In the case of any conflicts between the terms of this Agreement within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

Other Agreements between parties:

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

(G) *Non-Boycott of Israel.* Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(H) *Non-Boycott of Energy.* Pursuant to Texas Senate Bill 13 (2021), Contractor certifies that either (i) it does not boycott Israel and will not boycott energy companies; and (2) will not boycott energy companies during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

(I) *Non-Boycott of Firearm Entity.* Pursuant to Texas Senate Bill 19 (2021), Contractor certifies that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(J) *Access to Premises.* Authorized representatives of the Contractor will be allowed access to the facilities on City premises at reasonable times to fulfil the obligations of the Contractor regarding such facilities. The contractor shall adhere to all City rules, regulations, and guidelines while on City property. It is expressly understood that the City may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security,

public safety).

(K) **INTERLOCAL PARTICIPATION**

The City may enter Interlocal Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as "Entity" or "Entities") to enhance the City's purchasing power. At the City's sole discretion and option, City may inform other Entities that they may acquire items listed in this IFB. Such acquisition(s) shall be at the prices stated herein and shall be subject to bidder's acceptance. Entities desiring to acquire items listed in this IFB shall be listed on a rider attached hereto, if known at the time of issuance of the IFB. City may issue subsequent riders after contract award setting forth additional Entities desiring to utilize this bid. VENDOR shall sign and return any subsequently issued riders within ten calendar days of receipt.

In no event shall City be considered a dealer, re-marketer, agent or other representative of Vendor or Entity. Further, City shall not be considered and is not an agent; partner or representative of the Entity making purchases hereunder, and shall not be obligated or liable for any such order.

Entity purchase orders shall be submitted to Vendor by the Entity. City will not be liable or responsible for any obligations, including, but not limited to, payment, and for any item ordered by an entity other than City.

Vendor authorizes City's use of Vendor's name, trademarks and Vendor provided materials in City's presentations and promotions regarding the availability of use of this contract. The City makes no representation or guarantee as to any minimum amount being purchased by City or Entities, or whether Entity will purchase utilizing City's contract.

Section 7. <u>Termination</u>

(A) This Agreement may be terminated:

(1) By the mutual agreement and consent of both Contractor and City;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for

those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE CITY OF SCHERTZ, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY, AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.

Section 9. Notices

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 10. No Assignment

Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 11. Severability

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 12. Waiver

Either City or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided

herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 13. Governing Law; Venue

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Guadalupe County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Guadalupe County, Texas.

Section 14. Paragraph Headings; Construction

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 15. Binding Effect

Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 16. Gender

Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 17. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 18. Exhibits & Attachments

All exhibits and attachments to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. Entire Agreement

It is understood and agreed that this Agreement, which incorporates the original RFP, Contractor's Response to RFP, and Purchase Order(s) issued for payment contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Order of Precedence. In the event of a conflict between the terms and conditions included in the body of this Agreement and the terms and conditions included in any of the incorporated documents, the order of precedence shall be: (a)Agreement; (b) the attachments and/or exhibits to Agreement, (c)Contractor's Response to RFP, and (d) Purchase Order(s).

Section 20. Relationship of Parties

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 21. Right To Audit

City shall have the right to examine and audit the books and records of Contractor with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 22. Dispute Resolution

In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire

Contractor states that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Certificate of Interested Parties

Effective January 1, 2016, pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Schertz City Council will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for all contract amendments, extensions or renewals. Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/tec/1295-Info.htm for more information.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS C MISDEMEANOR.

[The remainder of this page is intentionally left blank.]

EXECUTED on this the _____ day of _____ , 20__.

CITY:	**CONTRACTOR:**
By: _____	By: _____
Name: Steve Williams	Name: _____
Title: City Manager	Title: _____

ADDRESS FOR NOTICE:

CITY:	**CONTRACTOR:**
City of Schertz Attn: Steve Williams, City Manager 1400 Schertz Parkway Schertz, Texas 78154	**Proficient Constructors, LLC** Attn: Iris Luna, President & CEO 2026 S Callaghan Rd San Antonio, TX 78227

Exhibit “A”

SCOPE OF WORK

Scope of Work

The contractor shall provide all equipment, materials, and personnel necessary to complete the following minimum requirements.

SECTION 8

COST PROPOSAL

Proposal of: Proficient Constructors, LLC
(Proposer Company Name)

To: **The City of Schertz**

RFP Title: **Concrete On-Call Services**

RFP#: **2026-011**

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the services required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

8.1 Pricing for Services

The proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

The City will not recognize or accept any charges or fees to perform the Services that are not specifically stated in this Cost Proposal

In this Cost Proposal, Proposer should describe each significant phase in the process of providing the Services to The City, and the time period within which Proposer proposes to be able to complete each such phase.

a. Cost Proposal Methodology

This section shall detail the individual line-item prices that were used to calculate the Complete Project Price.

PRICING SCHEDULE

**Unit Price Rates shall include all material, labor, mobilization fee, de-mob, permitting, signage and safety unless otherwise specified. For example, the placement of a 4" sidewalk segment per the City of Schertz standard details would include all permitting, mobilization, traffic control methods as required, the placement and compaction of 2" of flex base, steel reinforcement, backfill once forms are removed, site restoration as needed and other materials and labor. These items should reflect in the Unit Price Rates as well.

Specified Work			
PLACEMENT/ REMOVAL	**Sawtooth Curb and Gutter**	**Unit**	**Unit Price**
Placement	10 – 100	LF	**$55.50**
Placement	101 -200	LF	**$49.00**
Placement	201 – 500	LF	**$44.00**
Placement	501+ LF	LF	**$40.50**
Removal		LF	**$21.00**
PLACEMENT/ REMOVAL	**7” Curb Only**	**Unit**	**Unit Price**
Placement	10 – 100	LF	**$49.00**
Placement	101 -200	LF	**$43.00**
Placement	201 – 500	LF	**$39.50**
Placement	501+ LF	LF	**$36.00**
Removal		LF	**$17.50**
PLACEMENT/ REMOVAL	**Curb & Gutter**	**Unit**	**Unit Price**
Placement	10 – 100	LF	**$60.50**
Placement	101 -200	LF	**$53.50**
Placement	201-500	LF	**$49.00**
Placement	501+ LF	LF	**$44.00**
Removal		LF	**$21.00**
PLACEMENT/ REMOVAL	**4” Sidewalk**	**Unit**	**Unit Price**
Placement	10 – 100	SY	**$127.50**
Placement	101 -200	SY	**$111.00**

Placement	201 – 500	SY	**$102.00**
Placement	501+ LF	SY	**$92.50**
Removal		SY	**$46.50**
PLACEMENT/ REMOVAL	**6" Sidewalk**	**Unit**	**Unit Price**
Placement	10 – 100	SY	**$144.50**
Placement	101 -200	SY	**$127.50**
Placement	201 – 500	SY	**$116.00**
Placement	501+ LF	SY	**$106.50**
Removal		SY	**$52.00**
Specified Work, Cont.		**Unit**	**Unit Price**
Removal of Misc Concrete		SY	**$64.00**
Flush Curb (Ribbon Curb)		SY	**$191.00**
Concrete Riprap (5", w/#4 Steel at 12" on Center Each Way)		SY	**$162.00**
Miscellaneous Concrete Placement (w/#4 Steel at 12" on Center Each Way)		SY	**$173.50**
3ft Valley Gutters		LF	**$67.00**
Asphalt Patch/Repair Type D		SY	**$127.50**
Flowable Fill Placement		CY	**$375.50**
5ft Concrete Trickle Channel		LF	**$110.00**
Valve Box Concrete Encasement		CY	**$520.00**
Manhole Ring Concrete Encasement		CY	**$982.00**
5" Driveway Section		SY	**$139.00**
6" Driveway Section		SY	**$156.00**

ADA Curb Ramp (Type IV)	EA	**$3,927.50**
ADA Curb Ramp (Type II)	EA	**$4,158.00**
Non-Specified Fees	**Unit**	**Rate**
Non-Specified Work Labor Rate	Per Hour	**$58.00**
Invoice plus Mark Up %	%	**10%**
Mobilization Fee	Rate	**$850.00**
Demobilization Fee	Rate	**$850.00**
Signage & Safety Barricades	Rate (Daily, Weekly, Monthly)	**$250 / $1,000 / $3,000**
Pump Truck (per hour)	Per Hour	**$225.00**

Exhibit "B"

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Schertz accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

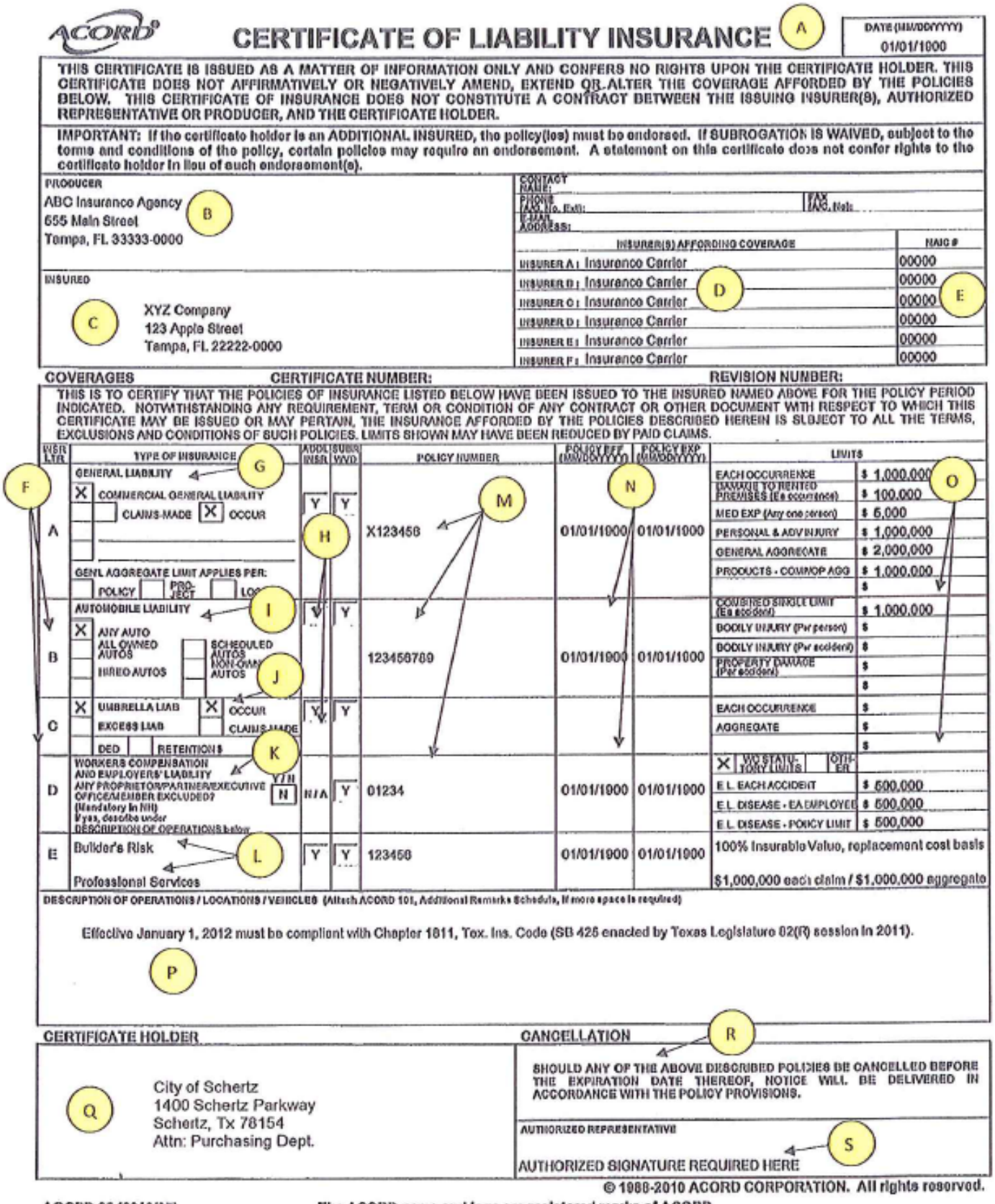
INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Schertz shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Schertz shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement**.
3. All insurance policies shall be endorsed to the effect that The City of Schertz will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Schertz as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Schertz of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Schertz.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Schertz with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Schertz within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Schertz, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Schertz. The certificate of insurance and endorsements shall be sent to:

City of Schertz
Purchasing Department
1400 Schertz Parkway
Schertz, TX 78154

emailed to: purchasing@schertz.com
Faxed to: 210-619-1169



ACORD

CERTIFICATE OF LIABILITY INSURANCE

A

DATE (MM/DD/YYYY)
01/01/1000

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 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
ABC Insurance Agency
555 Main Street
Tampa, FL 33333-0000

B

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Insurance Carrier	00000
INSURER B : Insurance Carrier	00000
INSURER C : Insurance Carrier	00000
INSURER D : Insurance Carrier	00000
INSURER E : Insurance Carrier	00000
INSURER F : Insurance Carrier	00000

D

E

INSURED
C
XYZ Company
123 Apple Street
Tampa, FL 22222-0000

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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.

F

INSR LTR	TYPE OF INSURANCE	G	ADDL INSR	SUBR WVD	POLICY NUMBER	M	POLICY EFF (MM/DD/YYYY)	N	POLICY EXP (MM/DD/YYYY)	LIMITS	O
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	H	Y	Y	X123456		01/01/1000		01/01/1000	EACH OCCURRENCE $ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ 100,000 MED EXP (Any one person) $ 5,000 PERSONAL & ADV INJURY $ 1,000,000 GENERAL AGGREGATE $ 2,000,000 PRODUCTS - COMP/OP AGG $ 1,000,000 $	
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	I J	Y	Y	123456789		01/01/1000		01/01/1000	COMBINED SINGLE LIMIT (Ea accident) $ 1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $ $	
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $	K	Y	Y						EACH OCCURRENCE $ AGGREGATE $ $	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	Y	01234		01/01/1000		01/01/1000	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT $ 500,000 E.L. DISEASE - EA EMPLOYEE $ 500,000 E.L. DISEASE - POLICY LIMIT $ 500,000	
E	Builder's Risk Professional Services	L	Y	Y	123456		01/01/1900		01/01/1900	100% Insurable Value, replacement cost basis $1,000,000 each claim / $1,000,000 aggregate	

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

Effective January 1, 2012 must be compliant with Chapter 1811, Tex. Ins. Code (SB 425 enacted by Texas Legislature 82(R) session in 2011).

P

CERTIFICATE HOLDER

Q
City of Schertz
1400 Schertz Parkway
Schertz, Tx 78154
Attn: Purchasing Dept.

CANCELLATION

R

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

S

AUTHORIZED SIGNATURE REQUIRED HERE

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(*Instructions for completing and submitting a certificate to the City of Schertz*)

Complete the certificate of insurance with the information listed below:

A) Certificate of Insurance date
B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.
C) Insured's (Insurance Policy Holder) Information – complete name & address information
D) Insurer (name/names of insurance company) **(Remember the city requires all insurance companies to be Authorized to do business in the State of Texas be rated by A.M. Best with a rating of B+ (or better) Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)
E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
F) Insurer letter represents which insurance company provides which type of coverage from D
G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Contractor Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
L) Builder's Risk Policy – for construction projects as designated by the City of Schertz.
Professional Liability Coverage – for professional services if required by the City of Schertz.
M) Insurance Policy #'s
N) Insurance policy effective dates (always check for current dates)
O) Insurance Policy limits (See Insurance Requirements Checklist)
P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy(ies) must be provided separately and not in this section. The following endorsements are required by the City of Schertz.
    (1) Adding the City of Schertz as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
    (2) Waiver of Subrogation
    (3) Primary and Non-Contributory
    (4) Cancellation Notice
Q) City of Schertz's name and address information must be listed in this section
R) Notice of cancellation, non-renewal, or material change to the insurance policy(ies) must be provided to the City of Schertz in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the city as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
S) The certificate must be signed by the Authorized Agent in this section of the certificate form.

Exhibit “C”

EVIDENCE OF INSURANCE

Exhibit “B”

Service Agreement, Westhill Paving, Inc.

CITY OF SCHERTZ

SERVICE AGREEMENT

THE STATE OF TEXAS §
§
GUADALUPE COUNTY §

This Service Agreement ("Agreement") is made and entered by and between the City of Schertz, Texas, (the "City") a Texas municipality, and Westhill Paving, Inc. ("Contractor").

Section 1. Duration
This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through October 31, 2029 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

Section 2. Scope of Work
(A) Contractor shall perform the Work as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project".

(B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.

(C) The Contractor shall perform its Work for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent Contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation
(A) The Contractor shall be paid in full upon completion of the project or in the manner set forth in Exhibit "A" and as provided herein.

(B) *Billing Period.* Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Contractor's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.

(D) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor.

(1) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

(2) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.

(3) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.

(4) To the extent there is a conflict between this Section and any other language or covenants in this Agreement, this Section 3 shall control.

Section 4. Time of Completion

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination.

(A) Contract Times: Days

The Work is expected to be substantially completed within ____ calendar days after the Notice to Proceed is given ("Substantial Completion")

(B) Liquidated Damages

Contractor and Owner recognize that time is of the essence as stated 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 the Scope of Work, plus any extensions thereof allowed in accordance with the Contract. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Contractor further acknowledges and agrees that, if the Contractor fails to substantially, or cause the Substantial Completion of any portion of the Work within the Contract time, the Owner will sustain actual damages because of such failure. The exact amount of such damage will be difficult to ascertain. Therefore, the Owner and Contractor agree that, if the Contractor shall neglect, fail, or refuse to achieve substantial completion of the Work by the Substantial Completion date, subject to proper extension granted by the Owner, then the Contractor agrees to pay the Owner the sum of **Six hundred dollars ($600.00) per day** for each day in which such Work is not completed, not as penalty, but as liquidated damages, for the damages ("Liquidated Damages") that would be suffered by Owner as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Work as

required herein. The Liquidated Damages shall be in lieu of any and all other damages which may be incurred by the Owner as a result of the failure of Contractor to complete within the Contract Time.

Section 5. Insurance

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. The contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

Workers Compensation Insurance: Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers' liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than $1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than $1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be $2,000,000. This coverage shall protect the public or any person from injury or property damage sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than $2,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least $1,000,000 per occurrence for bodily injury and property damage or split limits of at least $1,000,000 for bodily injury per person per occurrence and $1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

Subcontractor: In the case of any work sublet, the Contractor shall require subcontractor and independent contractors working under the direction of either the Contractor or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Contractor.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".
Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

Section 6. Miscellaneous Provisions

(A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement, or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.

(B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.

(C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

(D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

(E) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this

subsection.

(F) *Conflict of Terms*.

Scope of work:

In the case of any conflicts between the terms of this Agreement within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

Other Agreements between parties:

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

(G) *Non-Boycott of Israel.* Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(H) *Non-Boycott of Energy.* Pursuant to Texas Senate Bill 13 (2021), Contractor certifies that either (i) it does not boycott Israel and will not boycott energy companies; and (2) will not boycott energy companies during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

(I) *Non-Boycott of Firearm Entity.* Pursuant to Texas Senate Bill 19 (2021), Contractor certifies that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(J) *Access to Premises.* Authorized representatives of the Contractor will be allowed access to the facilities on City premises at reasonable times to fulfil the obligations of the Contractor regarding such facilities. The contractor shall adhere to all City rules, regulations, and guidelines while on City property. It is expressly understood that the City may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security,

public safety).

(K) **INTERLOCAL PARTICIPATION**

The City may enter Interlocal Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as "Entity" or "Entities") to enhance the City's purchasing power. At the City's sole discretion and option, City may inform other Entities that they may acquire items listed in this IFB. Such acquisition(s) shall be at the prices stated herein and shall be subject to bidder's acceptance. Entities desiring to acquire items listed in this IFB shall be listed on a rider attached hereto, if known at the time of issuance of the IFB. City may issue subsequent riders after contract award setting forth additional Entities desiring to utilize this bid. VENDOR shall sign and return any subsequently issued riders within ten calendar days of receipt.

In no event shall City be considered a dealer, re-marketer, agent or other representative of Vendor or Entity. Further, City shall not be considered and is not an agent; partner or representative of the Entity making purchases hereunder, and shall not be obligated or liable for any such order.

Entity purchase orders shall be submitted to Vendor by the Entity. City will not be liable or responsible for any obligations, including, but not limited to, payment, and for any item ordered by an entity other than City.

Vendor authorizes City's use of Vendor's name, trademarks and Vendor provided materials in City's presentations and promotions regarding the availability of use of this contract. The City makes no representation or guarantee as to any minimum amount being purchased by City or Entities, or whether Entity will purchase utilizing City's contract.

Section 7. <u>Termination</u>

(A) This Agreement may be terminated:

(1) By the mutual agreement and consent of both Contractor and City;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for

those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE CITY OF SCHERTZ, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY, AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.

Section 9. Notices

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 10. No Assignment

Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 11. Severability

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 12. Waiver

Either City or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided

herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 13. Governing Law; Venue

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Guadalupe County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Guadalupe County, Texas.

Section 14. Paragraph Headings; Construction

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 15. Binding Effect

Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 16. Gender

Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 17. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 18. Exhibits & Attachments

All exhibits and attachments to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. Entire Agreement

It is understood and agreed that this Agreement, which incorporates the original RFP, Contractor's Response to RFP, and Purchase Order(s) issued for payment contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Order of Precedence. In the event of a conflict between the terms and conditions included in the body of this Agreement and the terms and conditions included in any of the incorporated documents, the order of precedence shall be: (a)Agreement; (b) the attachments and/or exhibits to Agreement, (c)Contractor's Response to RFP, and (d) Purchase Order(s).

Section 20. Relationship of Parties

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 21. Right To Audit

City shall have the right to examine and audit the books and records of Contractor with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 22. Dispute Resolution

In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire

Contractor states that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Certificate of Interested Parties

Effective January 1, 2016, pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Schertz City Council will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for all contract amendments, extensions or renewals. Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/tec/1295-Info.htm for more information.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS C MISDEMEANOR.

[The remainder of this page is intentionally left blank.]

EXECUTED on this the _____ day of _____ , 20__.

CITY:	**CONTRACTOR:**
By: _____	By: _____
Name: Steve Williams	Name: _____
Title: City Manager	Title: _____

ADDRESS FOR NOTICE:

CITY:	**CONTRACTOR:**
City of Schertz Attn: Steve Williams, City Manager 1400 Schertz Parkway Schertz, Texas 78154	**Westhill Paving, Inc.** Attn: Tomas Solares, Operations Manager 3012 FM 624, Suite A San Marcos, TX 78666

Exhibit “A”

SCOPE OF WORK

Scope of Work

The contractor shall provide all equipment, materials, and personnel necessary to complete the following minimum requirements.

Exhibit "B"

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Schertz accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

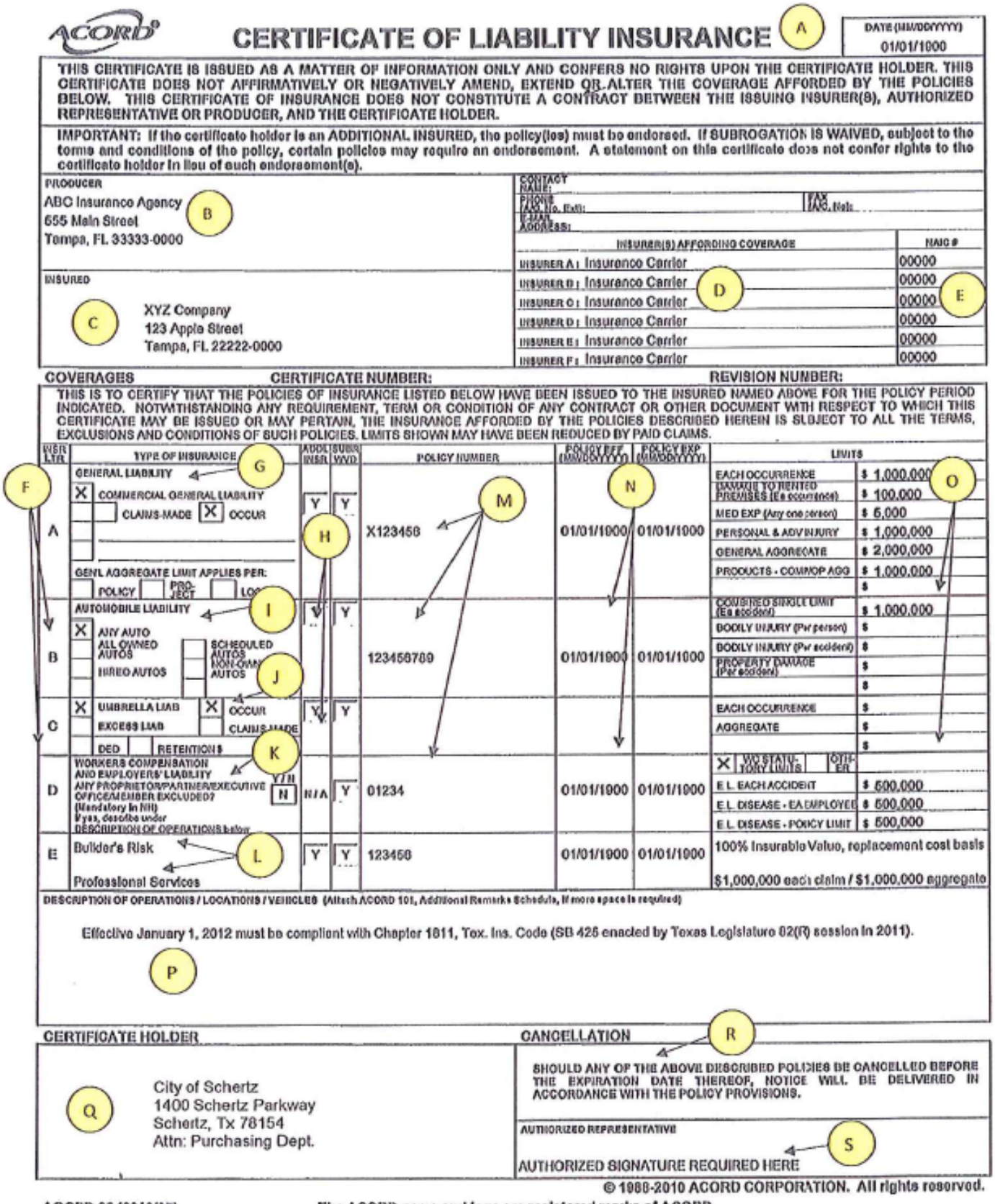
INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Schertz shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Schertz shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement**.
3. All insurance policies shall be endorsed to the effect that The City of Schertz will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Schertz as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Schertz of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Schertz.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Schertz with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Schertz within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Schertz, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Schertz. The certificate of insurance and endorsements shall be sent to:

City of Schertz
Purchasing Department
1400 Schertz Parkway
Schertz, TX 78154

emailed to: purchasing@schertz.com
Faxed to: 210-619-1169



ACORD

CERTIFICATE OF LIABILITY INSURANCE

A

DATE (MM/DD/YYYY)
01/01/1000

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 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
ABC Insurance Agency
555 Main Street
Tampa, FL 33333-0000

B

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Insurance Carrier	00000
INSURER B : Insurance Carrier	00000
INSURER C : Insurance Carrier	00000
INSURER D : Insurance Carrier	00000
INSURER E : Insurance Carrier	00000
INSURER F : Insurance Carrier	00000

D

E

INSURED
C
XYZ Company
123 Apple Street
Tampa, FL 22222-0000

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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.

F

INSR LTR	TYPE OF INSURANCE	G	ADDL INSR	SUBR WVD	POLICY NUMBER	M	POLICY EFF (MM/DD/YYYY)	N	POLICY EXP (MM/DD/YYYY)	LIMITS	O
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	H	Y	Y	X123456		01/01/1000		01/01/1000	EACH OCCURRENCE $ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ 100,000 MED EXP (Any one person) $ 5,000 PERSONAL & ADV INJURY $ 1,000,000 GENERAL AGGREGATE $ 2,000,000 PRODUCTS - COMP/OP AGG $ 1,000,000 $	
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	I J	Y	Y	123456789		01/01/1000		01/01/1000	COMBINED SINGLE LIMIT (Ea accident) $ 1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $ $	
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $	K	Y	Y						EACH OCCURRENCE $ AGGREGATE $ $	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	Y	01234		01/01/1000		01/01/1000	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT $ 500,000 E.L. DISEASE - EA EMPLOYEE $ 500,000 E.L. DISEASE - POLICY LIMIT $ 500,000	
E	Builder's Risk Professional Services	L	Y	Y	123456		01/01/1900		01/01/1900	100% Insurable Value, replacement cost basis $1,000,000 each claim / $1,000,000 aggregate	

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

Effective January 1, 2012 must be compliant with Chapter 1811, Tex. Ins. Code (SB 425 enacted by Texas Legislature 82(R) session in 2011).

P

CERTIFICATE HOLDER

Q
City of Schertz
1400 Schertz Parkway
Schertz, Tx 78154
Attn: Purchasing Dept.

CANCELLATION

R

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

S

AUTHORIZED SIGNATURE REQUIRED HERE

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(*Instructions for completing and submitting a certificate to the City of Schertz*)

Complete the certificate of insurance with the information listed below:

A) Certificate of Insurance date
B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.
C) Insured's (Insurance Policy Holder) Information – complete name & address information
D) Insurer (name/names of insurance company) **(Remember the city requires all insurance companies to be Authorized to do business in the State of Texas be rated by A.M. Best with a rating of B+ (or better) Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)
E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
F) Insurer letter represents which insurance company provides which type of coverage from D
G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Contractor Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
L) Builder's Risk Policy – for construction projects as designated by the City of Schertz.
Professional Liability Coverage – for professional services if required by the City of Schertz.
M) Insurance Policy #'s
N) Insurance policy effective dates (always check for current dates)
O) Insurance Policy limits (See Insurance Requirements Checklist)
P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy(ies) must be provided separately and not in this section. The following endorsements are required by the City of Schertz.
    (1) Adding the City of Schertz as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
    (2) Waiver of Subrogation
    (3) Primary and Non-Contributory
    (4) Cancellation Notice
Q) City of Schertz's name and address information must be listed in this section
R) Notice of cancellation, non-renewal, or material change to the insurance policy(ies) must be provided to the City of Schertz in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the city as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
S) The certificate must be signed by the Authorized Agent in this section of the certificate form.

Exhibit “C”

EVIDENCE OF INSURANCE

SECTION 8

COST PROPOSAL

Proposal of: Westhill Paving, Inc.
(Proposer Company Name)

To: **The City of Schertz**

RFP Title: **Concrete On-Call Services**

RFP#: **2026-011**

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the services required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

8.1 Pricing for Services

The proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

The City will not recognize or accept any charges or fees to perform the Services that are not specifically stated in this Cost Proposal

In this Cost Proposal, Proposer should describe each significant phase in the process of providing the Services to The City, and the time period within which Proposer proposes to be able to complete each such phase.

a. Cost Proposal Methodology

This section shall detail the individual line-item prices that were used to calculate the Complete Project Price.

PRICING SCHEDULE

**Unit Price Rates shall include all material, labor, mobilization fee, de-mob, permitting, signage and safety unless otherwise specified. For example, the placement of a 4" sidewalk segment per the City of Schertz standard details would include all permitting, mobilization, traffic control methods as required, the placement and compaction of 2" of flex base, steel reinforcement, backfill once forms are removed, site restoration as needed and other materials and labor. These items should reflect in the Unit Price Rates as well.

Specified Work			
PLACEMENT/ REMOVAL	**Sawtooth Curb and Gutter**	**Unit**	**Unit Price**
Placement	10 – 100	LF	$330.00
Placement	101 -200	LF	$63.50
Placement	201 – 500	LF	$50.95
Placement	501+ LF	LF	$42.25
Removal		LF	$15.50
PLACEMENT/ REMOVAL	**7" Curb Only**	**Unit**	**Unit Price**
Placement	10 – 100	LF	$320.00
Placement	101 -200	LF	$61.50
Placement	201 – 500	LF	$48.00
Placement	501+ LF	LF	$40.00
Removal		LF	$15.50
PLACEMENT/ REMOVAL	**Curb & Gutter**	**Unit**	**Unit Price**
Placement	10 – 100	LF	$328.00
Placement	101 -200	LF	$62.50
Placement	201-500	LF	$49.95
Placement	501+ LF	LF	$41.25
Removal		LF	$15.50
PLACEMENT/ REMOVAL	**4" Sidewalk**	**Unit**	**Unit Price**
Placement	10 – 100	SY	$583.50
Placement	101 -200	SY	$152.00

Placement	201 – 500	SY	$127.40
Placement	501+ LF	SY	$113.00
Removal		SY	$69.75
PLACEMENT/ REMOVAL	**6" Sidewalk**	**Unit**	**Unit Price**
Placement	10 – 100	SY	$585.00
Placement	101 -200	SY	$153.00
Placement	201 – 500	SY	$129.00
Placement	501+ LF	SY	$114.00
Removal		SY	$70.75
Specified Work, Cont.		**Unit**	**Unit Price**
Removal of Misc Concrete		SY	$69.75
Flush Curb (Ribbon Curb)		SY	$320.00
Concrete Riprap (5", w/#4 Steel at 12" on Center Each Way)		SY	$392.00
Miscellaneous Concrete Placement (w/#4 Steel at 12" on Center Each Way)		SY	$392.00
3ft Valley Gutters		LF	$328.00
Asphalt Patch/Repair Type D		SY	$140.00
Flowable Fill Placement		CY	$859.00
5ft Concrete Trickle Channel		LF	$340.00
Valve Box Concrete Encasement		CY	$1,250.00
Manhole Ring Concrete Encasement		CY	$1.250.00
5" Driveway Section		SY	$390.00
6" Driveway Section		SY	$392.00

ADA Curb Ramp (Type IV)	EA	$6,900.00
ADA Curb Ramp (Type II)	EA	$6,900.00
Non-Specified Fees	**Unit**	**Rate**
Non-Specified Work Labor Rate	Per Hour	$375.00
Invoice plus Mark Up %	%	20%
Mobilization Fee	Rate	$2,400.00
Demobilization Fee	Rate	$500.00
Signage & Safety Barricades	Rate (Daily, Weekly, Monthly)	$900.00, $4,500.00, $21,600.00
Pump Truck (per hour)	Per Hour	$195.00

Exhibit “C”

Service Agreement, Fanar 1 Enterprises, LLC

CITY OF SCHERTZ

SERVICE AGREEMENT

THE STATE OF TEXAS §
§
GUADALUPE COUNTY §

This Service Agreement ("Agreement") is made and entered by and between the City of Schertz, Texas, (the "City") a Texas municipality, and Fanar 1 Enterprise, LLC ("Contractor").

Section 1. Duration
This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect through October 31, 2029 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

Section 2. Scope of Work
(A) Contractor shall perform the Work as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project".

(B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.

(C) The Contractor shall perform its Work for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent Contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation
(A) The Contractor shall be paid in full upon completion of the project or in the manner set forth in Exhibit "A" and as provided herein.

(B) *Billing Period.* Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Contractor's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.

(D) *Payments Subject to Future Appropriation.* This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Contractor.

(1) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

(2) The payments to be made to Contractor, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.

(3) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Contractor for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Contractor, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.

(4) To the extent there is a conflict between this Section and any other language or covenants in this Agreement, this Section 3 shall control.

Section 4. Time of Completion

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination.

(A) Contract Times: Days

The Work is expected to be substantially completed within ____ calendar days after the Notice to Proceed is given ("Substantial Completion")

(B) Liquidated Damages

Contractor and Owner recognize that time is of the essence as stated 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 the Scope of Work, plus any extensions thereof allowed in accordance with the Contract. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed work following expiration of the Contract Time. The Contractor further acknowledges and agrees that, if the Contractor fails to substantially, or cause the Substantial Completion of any portion of the Work within the Contract time, the Owner will sustain actual damages because of such failure. The exact amount of such damage will be difficult to ascertain. Therefore, the Owner and Contractor agree that, if the Contractor shall neglect, fail, or refuse to achieve substantial completion of the Work by the Substantial Completion date, subject to proper extension granted by the Owner, then the Contractor agrees to pay the Owner the sum of **Six hundred dollars ($600.00) per day** for each day in which such Work is not completed, not as penalty, but as liquidated damages, for the damages ("Liquidated Damages") that would be suffered by Owner as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Work as

required herein. The Liquidated Damages shall be in lieu of any and all other damages which may be incurred by the Owner as a result of the failure of Contractor to complete within the Contract Time.

Section 5. Insurance

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. The contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

Workers Compensation Insurance: Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers' liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than $1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than $1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be $2,000,000. This coverage shall protect the public or any person from injury or property damage sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than $2,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least $1,000,000 per occurrence for bodily injury and property damage or split limits of at least $1,000,000 for bodily injury per person per occurrence and $1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

Subcontractor: In the case of any work sublet, the Contractor shall require subcontractor and independent contractors working under the direction of either the Contractor or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Contractor.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".
Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

Section 6. Miscellaneous Provisions

(A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement, or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.

(B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.

(C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

(D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

(E) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this

subsection.

(F) *Conflict of Terms*.

Scope of work:

In the case of any conflicts between the terms of this Agreement within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

Other Agreements between parties:

In the case of any conflicts between the terms of this Agreement and wording contained within any other attachment, amendment, and agreement executed between the parties in conjunction with this Agreement, this Agreement shall govern.

(G) *Non-Boycott of Israel.* Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

Relevant definitions from the bill:

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(H) *Non-Boycott of Energy.* Pursuant to Texas Senate Bill 13 (2021), Contractor certifies that either (i) it does not boycott Israel and will not boycott energy companies; and (2) will not boycott energy companies during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification as an attachment to this agreement.

(I) *Non-Boycott of Firearm Entity.* Pursuant to Texas Senate Bill 19 (2021), Contractor certifies that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(J) *Access to Premises.* Authorized representatives of the Contractor will be allowed access to the facilities on City premises at reasonable times to fulfil the obligations of the Contractor regarding such facilities. The contractor shall adhere to all City rules, regulations, and guidelines while on City property. It is expressly understood that the City may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security,

public safety).

(K) **INTERLOCAL PARTICIPATION**

The City may enter Interlocal Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as "Entity" or "Entities") to enhance the City's purchasing power. At the City's sole discretion and option, City may inform other Entities that they may acquire items listed in this IFB. Such acquisition(s) shall be at the prices stated herein and shall be subject to bidder's acceptance. Entities desiring to acquire items listed in this IFB shall be listed on a rider attached hereto, if known at the time of issuance of the IFB. City may issue subsequent riders after contract award setting forth additional Entities desiring to utilize this bid. VENDOR shall sign and return any subsequently issued riders within ten calendar days of receipt.

In no event shall City be considered a dealer, re-marketer, agent or other representative of Vendor or Entity. Further, City shall not be considered and is not an agent; partner or representative of the Entity making purchases hereunder, and shall not be obligated or liable for any such order.

Entity purchase orders shall be submitted to Vendor by the Entity. City will not be liable or responsible for any obligations, including, but not limited to, payment, and for any item ordered by an entity other than City.

Vendor authorizes City's use of Vendor's name, trademarks and Vendor provided materials in City's presentations and promotions regarding the availability of use of this contract. The City makes no representation or guarantee as to any minimum amount being purchased by City or Entities, or whether Entity will purchase utilizing City's contract.

Section 7. <u>Termination</u>

(A) This Agreement may be terminated:

(1) By the mutual agreement and consent of both Contractor and City;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for

those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE CITY OF SCHERTZ, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY, AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.

Section 9. Notices

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 10. No Assignment

Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 11. Severability

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 12. Waiver

Either City or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided

herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 13. Governing Law; Venue

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Guadalupe County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Guadalupe County, Texas.

Section 14. Paragraph Headings; Construction

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 15. Binding Effect

Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 16. Gender

Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 17. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 18. Exhibits & Attachments

All exhibits and attachments to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. Entire Agreement

It is understood and agreed that this Agreement, which incorporates the original RFP, Contractor's Response to RFP, and Purchase Order(s) issued for payment contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Order of Precedence. In the event of a conflict between the terms and conditions included in the body of this Agreement and the terms and conditions included in any of the incorporated documents, the order of precedence shall be: (a)Agreement; (b) the attachments and/or exhibits to Agreement, (c)Contractor's Response to RFP, and (d) Purchase Order(s).

Section 20. Relationship of Parties

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 21. Right To Audit

City shall have the right to examine and audit the books and records of Contractor with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 22. Dispute Resolution

In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire

Contractor states that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Certificate of Interested Parties

Effective January 1, 2016, pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Schertz City Council will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for all contract amendments, extensions or renewals. Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/tec/1295-Info.htm for more information.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS C MISDEMEANOR.

[The remainder of this page is intentionally left blank.]

EXECUTED on this the _____ day of _____ , 20__.

CITY:	**CONTRACTOR:**
By: _____	By: _____
Name: Steve Williams	Name: _____
Title: City Manager	Title: _____

ADDRESS FOR NOTICE:

CITY:	**CONTRACTOR:**
City of Schertz Attn: Steve Williams, City Manager 1400 Schertz Parkway Schertz, Texas 78154	**Fanar 1 Enterprise, LLC** Attn: Genesis Barlin, Contract Manager 4606 FM 1960 W., Suite 430 Houston,TX 77069

Exhibit “A”

SCOPE OF WORK

Scope of Work

The contractor shall provide all equipment, materials, and personnel necessary to complete the following minimum requirements.

SECTION 8

COST PROPOSAL

Proposal of: _ **FANAR 1 ENTERPRISE LLC**
(Proposer Company Name)

To: **The City of Schertz**

RFP Title: **Concrete On-Call Services**

RFP#: **2026-011**

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the services required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

8.1 Pricing for Services

The proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

The City will not recognize or accept any charges or fees to perform the Services that are not specifically stated in this Cost Proposal

In this Cost Proposal, Proposer should describe each significant phase in the process of providing the Services to The City, and the time period within which Proposer proposes to be able to complete each such phase.

a. Cost Proposal Methodology

This section shall detail the individual line-item prices that were used to calculate the Complete Project Price.

PRICING SCHEDULE

**Unit Price Rates shall include all material, labor, mobilization fee, de-mob, permitting, signage and safety unless otherwise specified. For example, the placement of a 4" sidewalk segment per the City of Schertz standard details would include all permitting, mobilization, traffic control methods as required, the placement and compaction of 2" of flex base, steel reinforcement, backfill once forms are removed, site restoration as needed and other materials and labor. These items should reflect in the Unit Price Rates as well.

Specified Work			
PLACEMENT/ REMOVAL	**Sawtooth Curb and Gutter**	**Unit**	**Unit Price**
Placement	10 – 100	LF	**$58.00**
Placement	101 -200	LF	**$45.00**
Placement	201 – 500	LF	**$38.00**
Placement	501+ LF	LF	**$34.00**
Removal		LF	**$14.00**
PLACEMENT/ REMOVAL	**7” Curb Only**	**Unit**	**Unit Price**
Placement	10 – 100	LF	**$45.00**
Placement	101 -200	LF	**$34.00**
Placement	201 – 500	LF	**$28.00**
Placement	501+ LF	LF	**$25.00**
Removal		LF	**$11.00**
PLACEMENT/ REMOVAL	**Curb & Gutter**	**Unit**	**Unit Price**
Placement	10 – 100	LF	**$55.00**
Placement	101 -200	LF	**$42.00**
Placement	201-500	LF	**$35.00**
Placement	501+ LF	LF	**$31.00**
Removal		LF	**$14.00**
PLACEMENT/ REMOVAL	**4” Sidewalk**	**Unit**	**Unit Price**
Placement	10 – 100	SY	**$125.00**
Placement	101 -200	SY	**$95.00**

Placement	201 – 500	SY	**$82.00**
Placement	501+ LF	SY	**$75.00**
Removal		SY	**$22.00**
PLACEMENT/ REMOVAL	**6" Sidewalk**	**Unit**	**Unit Price**
Placement	10 – 100	SY	**$145.00**
Placement	101 -200	SY	**$115.00**
Placement	201 – 500	SY	**$100.00**
Placement	501+ LF	SY	**$90.00**
Removal		SY	**$27.00**
Specified Work, Cont.		**Unit**	**Unit Price**
Removal of Misc Concrete		SY	**$30.00**
Flush Curb (Ribbon Curb)		SY	**$105.00**
Concrete Riprap (5", w/#4 Steel at 12" on Center Each Way)		SY	**$100.00**
Miscellaneous Concrete Placement (w/#4 Steel at 12" on Center Each Way)		SY	**$115.00**
3ft Valley Gutters		LF	**$48.00**
Asphalt Patch/Repair Type D		SY	**$85.00**
Flowable Fill Placement		CY	**$295.00**
5ft Concrete Trickle Channel		LF	**$78.00**
Valve Box Concrete Encasement		CY	**$950.00**
Manhole Ring Concrete Encasement		CY	**$1,050.00**
5" Driveway Section		SY	**$100.00**
6" Driveway Section		SY	**$110.00**

ADA Curb Ramp (Type IV)	EA	**$3,250.00**
ADA Curb Ramp (Type II)	EA	**$2,950.00**
Non-Specified Fees	**Unit**	**Rate**
Non-Specified Work Labor Rate	Per Hour	**$58.00**
Invoice plus Mark Up %	%	**12%**
Mobilization Fee	Rate	**$350.00**
Demobilization Fee	Rate	**$150.00**
Signage & Safety Barricades	Rate (Daily, Weekly, Monthly)	**$75/day; $300/week $900/month**
Pump Truck (per hour)	Per Hour	**$225.00**

Exhibit "B"

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Schertz accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

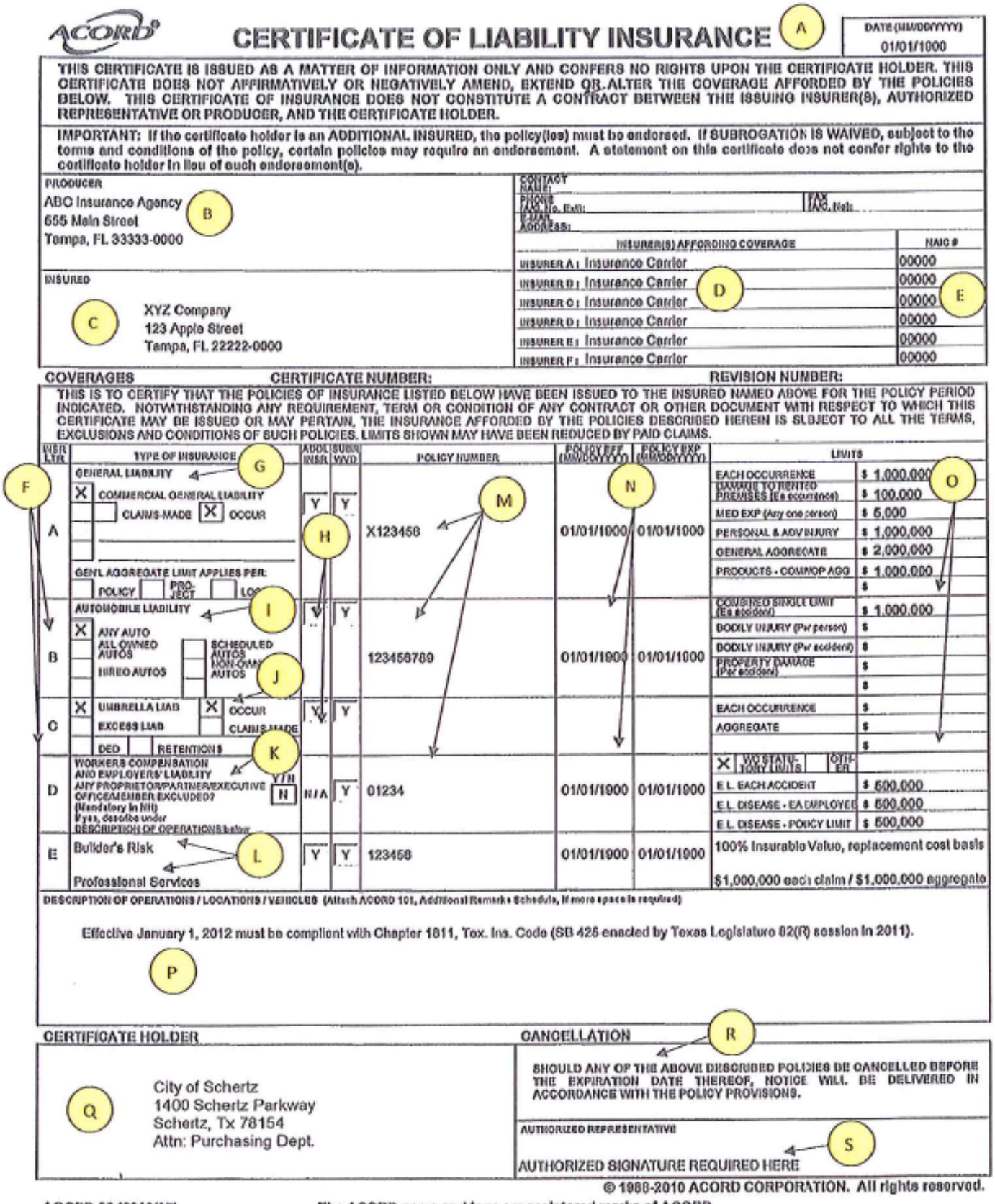
INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Schertz shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Schertz shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement**.
3. All insurance policies shall be endorsed to the effect that The City of Schertz will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Schertz as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Schertz of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Schertz.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Schertz with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Schertz within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Schertz, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Schertz. The certificate of insurance and endorsements shall be sent to:

City of Schertz
Purchasing Department
1400 Schertz Parkway
Schertz, TX 78154

emailed to: purchasing@schertz.com
Faxed to: 210-619-1169



ACORD

CERTIFICATE OF LIABILITY INSURANCE

A

DATE (MM/DD/YYYY)
01/01/1000

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 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
ABC Insurance Agency
555 Main Street
Tampa, FL 33333-0000

B

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Insurance Carrier	00000
INSURER B : Insurance Carrier	00000
INSURER C : Insurance Carrier	00000
INSURER D : Insurance Carrier	00000
INSURER E : Insurance Carrier	00000
INSURER F : Insurance Carrier	00000

D

E

INSURED
C
XYZ Company
123 Apple Street
Tampa, FL 22222-0000

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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.

F

INSR LTR	TYPE OF INSURANCE	G	ADDL INSR	SUBR WVD	POLICY NUMBER	M	POLICY EFF (MM/DD/YYYY)	N	POLICY EXP (MM/DD/YYYY)	LIMITS	O
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	H	Y	Y	X123456		01/01/1000		01/01/1000	EACH OCCURRENCE $ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ 100,000 MED EXP (Any one person) $ 5,000 PERSONAL & ADV INJURY $ 1,000,000 GENERAL AGGREGATE $ 2,000,000 PRODUCTS - COMP/OP AGG $ 1,000,000 $	
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	I J	Y	Y	123456789		01/01/1000		01/01/1000	COMBINED SINGLE LIMIT (Ea accident) $ 1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $ $	
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $	K	Y	Y						EACH OCCURRENCE $ AGGREGATE $ $	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	Y	01234		01/01/1000		01/01/1000	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT $ 500,000 E.L. DISEASE - EA EMPLOYEE $ 500,000 E.L. DISEASE - POLICY LIMIT $ 500,000	
E	Builder's Risk Professional Services	L	Y	Y	123456		01/01/1900		01/01/1900	100% Insurable Value, replacement cost basis $1,000,000 each claim / $1,000,000 aggregate	

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

Effective January 1, 2012 must be compliant with Chapter 1811, Tex. Ins. Code (SB 425 enacted by Texas Legislature 82(R) session in 2011).

P

CERTIFICATE HOLDER

Q
City of Schertz
1400 Schertz Parkway
Schertz, Tx 78154
Attn: Purchasing Dept.

CANCELLATION

R

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

S

AUTHORIZED SIGNATURE REQUIRED HERE

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(*Instructions for completing and submitting a certificate to the City of Schertz*)

Complete the certificate of insurance with the information listed below:

A) Certificate of Insurance date
B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.
C) Insured's (Insurance Policy Holder) Information – complete name & address information
D) Insurer (name/names of insurance company) **(Remember the city requires all insurance companies to be Authorized to do business in the State of Texas be rated by A.M. Best with a rating of B+ (or better) Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)
E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
F) Insurer letter represents which insurance company provides which type of coverage from D
G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Contractor Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
L) Builder's Risk Policy – for construction projects as designated by the City of Schertz.
Professional Liability Coverage – for professional services if required by the City of Schertz.
M) Insurance Policy #'s
N) Insurance policy effective dates (always check for current dates)
O) Insurance Policy limits (See Insurance Requirements Checklist)
P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy(ies) must be provided separately and not in this section. The following endorsements are required by the City of Schertz.
    (1) Adding the City of Schertz as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
    (2) Waiver of Subrogation
    (3) Primary and Non-Contributory
    (4) Cancellation Notice
Q) City of Schertz's name and address information must be listed in this section
R) Notice of cancellation, non-renewal, or material change to the insurance policy(ies) must be provided to the City of Schertz in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the city as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
S) The certificate must be signed by the Authorized Agent in this section of the certificate form.

Exhibit “C”

EVIDENCE OF INSURANCE