

INTERLOCAL PURCHASING AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This **INTERLOCAL PURCHASING AGREEMENT** (“Agreement”) is entered into between **NEW BRAUNFELS UTILITIES**, a Texas municipally owned utility (“NBU”) and the **CITY OF SAN MARCOS**, a home rule municipality of the State of Texas principally situated in Hays County, Texas (“San Marcos”) pursuant to the Interlocal Cooperation Act, TEX. GOV'T CODE ANN. §§791.001 - 791.031, as amended (each, a “Party”, and collectively, the “Parties”). In consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result thereof, the Parties agree as follows:

Recitals

WHEREAS, San Marcos has requested that NBU allow San Marcos to directly contract with OPIN, LLC, dba American FR and Safety, a South Carolina limited liability company authorized to transact business in the State of Texas (the “Vendor”) to purchase goods and services with similar terms and identical pricing as the Vendor Services Agreement, dated July 2, 2020, between NBU and Vendor;

WHEREAS, under NBU’s agreement with Vendor, Vendor is not required to contract with San Marcos, but Vendor has elected, at its discretion, and NBU has allowed San Marcos to purchase Vendor’s goods and services to be memorialized in a separate written contract between San Marcos and Vendor; and

WHEREAS, pursuant to Sections 791.011 and 791.025 of the Texas Government Code, San Marcos can contract with NBU to provide a governmental function or service that each Party is authorized to perform individually.

1. AUTHORIZATION

Appropriate action by ordinance, resolution or otherwise pursuant to the laws applicable to each Party shall be necessary before this Agreement becomes effective. The governing body of each Party shall designate in writing a representative to conduct matters under this Agreement.

2. TERM

This Agreement is effective on the latest date subscribed below and remains in effect to July 31, 2025.

3. SCOPE OF SERVICES

Pursuant to this Agreement, NBU agrees to extend to San Marcos the use of Vendor to provide a web-based uniform purchase program to include an available stock of specified items, delivery of items, item return/replace/repair services, alteration services, and sales and customer support

services (the “Services”).

4. LIMITATION OF LIABILITY

NOTHING IN THIS AGREEMENT MAY BE CONSTRUED AS CREATING ANY PERSONAL LIABILITY ON THE PART OF ANY OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF ANY PUBLIC BODY THAT MAY BE A PARTICIPANT TO THIS AGREEMENT AND THE PARTICIPANTS EXPRESSLY AGREE THAT THE EXECUTION OF THIS AGREEMENT DOES NOT CREATE ANY PERSONAL LIABILITY ON THE PART OF ANY OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF EITHER PARTICIPANT.

5. TERMINATION FOR CONVENIENCE

Either Party may terminate this Agreement for any reason with at least thirty (30) days' written notice to the other Party. In the event a Party terminates this Agreement, the remaining Party shall not be liable for any costs or damages incurred by the Party as a result of such termination.

6. AMENDMENTS

This Agreement may be modified or amended only by a written Amendment signed by all Parties.

7. SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable for any reason, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

8. ASSIGNMENT

This Agreement shall not be assigned or otherwise transferred to a third party without the prior written consent of each Party.

9. JOINT VENTURE

The Parties agree and acknowledge that this Agreement does not create a joint venture, partnership, or joint enterprise, and that each Party is not an agent of the other Party and that each Party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its officers, agents or employees in conjunction with the performance of services covered under this Agreement, without waiving any governmental immunity available to the Parties under Texas law and without waiving any defenses of the Parties under Texas law. The provisions of this section are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

10. PARTIES IN INTEREST

This Agreement shall not bestow any rights upon any third party, but rather, shall bind and benefit the Parties only.

11. NOTICES

All notices or communications which are required or permitted herein shall be in writing and shall be sufficient if delivered personally, sent by facsimile transmission, or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at their address or facsimile

numbers set forth below, which may be changed by notice to the other party:

To NBU:

New Braunfels Utilities
Attn: Purchasing Manager
New Braunfels Utilities
355 FM 306
New Braunfels, TX 78130

To SAN MARCOS:

City of San Marcos
Attn: Purchasing Manager
630 E Hopkins St
San Marcos, TX 78666

with a copy to:

City of San Marcos Legal Department
630 E Hopkins St
San Marcos, TX 78666
Attention: City Attorney

12. FUNDING OBLIGATION

All Parties acknowledge neither Party has allocated or appropriated any funds under this Agreement.

13. APPLICABLE LAWS

This Agreement is subject to and shall be construed in accordance with the laws of the State of Texas, the City Charter and Ordinances of the City of San Marcos, the rules and regulations of NBU, and to the extent required by any agreement between the City of San Marcos or NBU and any Federal agency, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction over this Project.

14. CAPTIONS

The captions at the beginning of the articles and sections of this Agreement are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Agreement.

15. AMBIGUITIES

In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party because of such Party's involvement in the preparation or drafting of this Agreement.

16. ENTIRE AGREEMENT

This Agreement merges the prior negotiations and understandings of the Parties hereto and embodies the entire agreement of the Parties, and supersedes any prior understandings, agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the subject matter hereof, whether oral or written. Any amendment to this Agreement must be in writing, signed by all Parties and accomplished in accordance with the modification requirements of the respective Parties.

17. EXECUTION. The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

NEW BRAUNFELS UTILITIES

By: _____

Name: Ryan Kelso

Title: Interim CEO

ATTEST/SEAL:

CITY OF SAN MARCOS, TEXAS

Signed by:

City Clerk

City Manager