

**PROFESSIONAL SERVICES AGREEMENT
FOR
SOUTHERN EDWARDS PLATEAU HABITAT CONSERVATION PLAN
BIOLOGIST**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), acting by and through its Development Services Department Director (“Director”), or said Director’s designee, pursuant to Ordinance No. _____ passed and approved on the ____ day of _____, 20____ and _____ (“Consultant”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

This contract shall begin upon the effective date of the ordinance awarding the contract or April 1, 2025, whichever is later. This contract shall begin upon the date specified in the award letter, if it does not exceed \$50,000. The contract shall terminate on February 28, 2026.

Renewals: At City’s option, this Contract may be renewed under the same terms and conditions for five (5) additional (1) year period(s). Renewals shall be in writing and signed by Department Director or designee, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding, therefore.

II. SCOPE OF SERVICES

2.1 Consultant agrees to provide the services described in this Article II entitled *Scope of Services* in exchange for the compensation described in Article III entitled *Compensation*.

2.2 Consultant services will consist of the following:

1. Program Administration, Management, and Coordination:

- Oversee the Southern Edwards Plateau Habitat Conservation Plan to ensure compliance with the SEP-HCP and with U.S Fish and Wildlife services (USFW).
- Coordinate with City and County staff, enrollees, USFW, and stakeholders to ensure plan is administered effectively and efficiently.

2. Application Processing, Review, & Coordination:
 - Review and process SEP-HCP applications and provide for each:
 - draft mitigation determinations.
 - draft briefing memos for coordinating committee, participation agreements, and participation certificates. Associated record retention.
3. Evaluation, Establishment, Management, & Monitoring of Preserve Lands:
 - Monitor Golden Cheek Warbler credits with the 3rd party bank
 - Monitor Northern Preserve, Panther Springs, Government Canyon, Crane Bat Cave, and future preserves.
 - Genetic studies of listed species.
 - Compile and manage ledgers for each preserve, and provide quarterly updates to DSD, Bexar County, and City of San Antonio Finance Department.
4. Education, Outreach, & Research to support SEP-HCP staff and customers:
 - Conduct outreach and education to stakeholders, as needed.
 - Research potential preserves to acquisition
5. Cost estimates and construction oversight for protection fencing and gating on preserve properties:
 - Generate cost estimates for fencing needs around current and potential future preserve lands.
6. Meeting coordination and preparation:
 - Attend SEP-HCP coordinating committee meetings, staff weekly meetings, meetings with potential applicants, meetings with current applicants throughout the application process and before signing the participation agreement to review the terms and agreements.
7. Environmental clearance:
 - Ensure endangered species habitat is protected in accordance with USFW standards.
8. U.S. Fish and Wildlife reports and surveys:
 - Draft and submit fiscal year annual reports to DSD and to USFW
 - Endangered species surveys
9. Selection or assistance in selection of subcontractors:
 - Report to DSD and Bexar County any subcontractor needs prior to hiring.
 - Report on a monthly basis the costs associated with hired subcontractors.
10. Establishing future Karst Fauna Area (KFA) preserves:
 - Conduct Karst and Golden Cheek Warbler surveys to support potential preserve establishment.

- Submit necessary reports, surveys, and memos to USFW for review of establishment of a preserve.

11. Monitor, record, and document any breaches that may occur or if applicants encounter an occupied feature during construction.

12. Provides quarterly shapefiles of enrolled SEP-HCP properties to add to our OneStop GIS map.

13. Miscellaneous duties as may be needed for the maintenance and oversight of the SEP-HCP:

- Provides monthly detailed invoices that includes work completed, hour rate, hours spent on each task, and supporting documents (pictures of site visits, summary of work conducted, etc.)

2.3 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VI. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. City shall notify Consultant in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

III. COMPENSATION TO CONSULTANT

3.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by the Director or designated appointee of all services set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \$_____ as total compensation. For the duration of this Agreement, Bexar County shall contribute an annual amount of \$50,000.00, (being \$300,000.00 in total), towards the overall funding amount for this Agreement. Said funds shall be disbursed to the City annually upon request by the City.

3.2 Consultant shall submit invoices to City upon completion of work performed on a monthly basis. The invoice shall itemize the work performed, including how much time was spent on the task and the value of the services performed. Consultant shall deliver invoices for payment to City of San Antonio - Development Services Department, Attn: Policy Administrator_____.

3.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. Total payments to Consultant cannot exceed that amount set forth

in Section 3.1 above without prior approval and agreement of all parties, evidenced in writing, and approved by the Director.

3.4 Final acceptance of all tasks and services requires written approval by City. The approval official shall be the Director or designated appointee. Payment will be made to Consultant following written approval by the Director or designated appointee, as stated above. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

IV. OWNERSHIP OF DOCUMENTS

4.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

4.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

4.3 In accordance herewith, Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

4.4 Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Consultant acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Consultant agrees that the contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

4.5 Consultant warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. City hereby relies on Consultant's certification, and if found to be false, City may terminate this Agreement for material breach.

V. RECORDS RETENTION

5.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to City at their respective offices, at all reasonable times and as often

as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

5.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to, or at the conclusion of, said retention period.

5.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

5.4 Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Consultant acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Consultant agrees that the contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

5.5 By signing this Agreement, Consultant warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. City hereby relies on Consultant’s certification, and if found to be false, City may terminate this Agreement for material breach.

VI. TERMINATION

6.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article I. *Term*, or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause. This Agreement may be terminated by City without cause upon ten (10) calendar days’ written notice to Consultant by Director or his designee in accordance with Article XXII. *Notice*.

6.3 Termination For Cause. Upon written notice, which shall be provided in accordance with Article XXII. *Notice*, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

6.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article IX. *Assignment and Subcontracting*; or

6.3.2 Any material breach of this Agreement, as determined solely by City.

6.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated below in this Section 6.4, same shall be considered an Event of Default with Opportunity for Cure. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article XXII. *Notice*, to cure such default. If Consultant fails to cure the default within such thirty (30) day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

6.4.2 Bankruptcy or selling substantially all of company's assets;

6.4.3 Failing to perform or failing to comply with any covenant herein required; or

6.4.4 Performing unsatisfactorily.

6.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article V. *Records Retention*. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

6.7 Within forty-five (45) calendar days of the effective date of completion, termination, or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

6.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

6.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VII. INSURANCE

7.1 No later than 30 days before providing services under this Agreement, Consultant must provide a completed Certificate(s) of Insurance to City's Office of Risk Management. The certificate must be:

7.1.1 clearly labeled with the name of this Agreement in the Description of Operations block;

7.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance); and

7.1.3 properly endorsed and have the agent's signature, and phone number.

7.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Office of Risk Management. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

7.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, Consultant certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.

7.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

7.5 Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the Consultant claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Independent Contractors*	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate
4. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
5. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage.
6. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
*If Applicable	

7.6 Consultant must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain reasonable and appropriate levels of insurance and provide a certificate of insurance and endorsement that names Consultant and City as additional insureds (as appropriate). Consultant agrees to accept liability in the event their subcontractor's insurance and limits are exceeded in the event of a claim. Consultant shall provide City with subcontractor certificates and endorsements before the subcontractor starts work.

7.7 If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Consultant must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

City of San Antonio
Attn: Office of Risk Management
100 W. Houston Street, 7th Floor

7.8 Consultant's insurance policies must contain or be endorsed to contain the following provisions:

- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers' compensation, employer's liability, and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
- Consultant shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and
- Should any of the described policies be suspended, cancelled, non-renewed or there is a material change in coverage prior to the expiration date thereof, notice will be delivered to ABS in accordance with policy provisions. ABS will then notify the City within (10) calendar days.

7.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

7.10 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Consultant to stop work and/or withhold any payment(s) which become due to Consultant under this Agreement until Consultant demonstrates compliance with requirements.

7.11 Nothing contained in this Agreement shall be construed as limiting the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

7.12 Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

7.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

7.14 Consultant and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

VIII. INDEMNIFICATION

8.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to personal or bodily injury, death, and property damage, made upon the CITY directly or indirectly arising out of, resulting from, or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant, or subcontractor of CONSULTANT and their respective officers, agents, employees, directors, and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, or its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

8.3 Defense Counsel. City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be

represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

8.4 Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

IX. ASSIGNMENT AND SUBCONTRACTING

9.1 Consultant shall perform all work under this Agreement. No assignment or subcontracting is authorized unless provided for below in Section 8.2.

9.2 Before utilizing any subcontractor to perform any part of the work or assigning work identified in this Agreement, the Consultant shall seek written authorization from the Director, who shall have the sole discretion to approve or reject such a request. Any work or services approved for subcontracting or assigning hereunder shall be subcontracted or assigned only by written contract and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors and assignees with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor, employee, or assignee of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor indicate only such an entity as has been approved by the City.

9.3 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer, or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, subcontracting, or any other means, without the consent of the Director. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee, or subcontractor.

9.4 Any attempt to transfer, pledge, or otherwise assign this Agreement without said written approval shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title, or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles, and interest of Consultant shall thereupon cease and terminate, in accordance with Article VI. *Termination*, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

X. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that they are an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of “respondeat superior” shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint venturers between City and Consultant. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City’s Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City’s Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant’s certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its subcontractor and supplier agreements entered into pursuant to City contracts.

XII. CONFLICT OF INTEREST

12.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial

interest in any contract with the City. An officer or employee has a prohibited “financial interest” in a contract with the City or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- A City officer or employee, his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
- An entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) ten (10) percent or more of the voting stock or shares of the entity, or (ii) ten (10) percent or more of the fair market value of the entity; or
- An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

12.2 By submitting a proposal, Consultant warrants and certifies, and a contract awarded pursuant to this Professional Services Agreement is made in reliance thereon, that none of the individuals or entities listed in the above subsection are a party to this contract or sale.

XIII. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the Director.

XIV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including but not limited to the City Charter, City Code, or Ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XV. INTELLECTUAL PROPERTY

15.1 Consultant shall pay all royalties and licensing fees. Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process or product

specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

15.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately:

Either:

- 15.2.1 Obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be; or
- 15.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and
- 15.2.3 Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

15.3 Consultant further agrees to:

- 15.3.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement;
- 15.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and
- 15.3.3 Indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- 15.3.4 Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City;
- 15.3.5 The Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim;
- 15.3.6 The liability claimed shall not have arisen out of the City's negligent act or omission; and
- 15.3.7 The City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

XVI. LICENSES/CERTIFICATIONS/TRAINING

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license, and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state, and local laws, rules, and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the Director, as described in Article XIII. *Amendments*. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

19.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures, and guarantees that he/she has full legal authority to execute this Agreement on behalf of

Consultant and to bind Consultant to all of the terms, conditions, provisions, and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. NOTICE

22.1 Addresses. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

THE CITY

City of San Antonio
Attn: Michael Shannon,
Director
Development Services
Department
1901 South Alamo
San Antonio, TX 78204
or
P.O. Box 839966
San Antonio, Texas
78283-3966

CONSULTANT:

22.2 Change of Address. Notice of change of address by any Party must be made in writing and mailed to the other Parties within fifteen (15) business days of such change. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

XXIII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIV. STATE PROHIBITIONS ON CONTRACTS

24.1 This Article only applies to a contract that:

(1) is between a governmental entity and a company with 10 or more full-time employees; and

(2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

24.2 "Company" means a for-profit 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. This term does not include a sole proprietorship.

24.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

"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.

By executing this Agreement, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate this contract for material breach.

24.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Texas Government Code §2274 provides that a governmental entity may not enter into a Contract with a company for goods or services, unless the contract contains a written Verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, 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 with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

By executing this Agreement, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

24.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

By executing this Agreement, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXV. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXVI. NON-DISCRIMINATION

As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXVII. HEAT ILLNESS PREVENTION

Consultant hereby verifies that it agrees to adhere to the City of San Antonio's Heat Illness Prevention Ordinance during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVIII. CONFIDENTIAL INFORMATION

28.1 Consultant shall secure the confidentiality of records and information that Consultant may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting City's or its authorized representatives' right of access to records or other information under this Contract.

28.2 No reports, information, project evaluation, project designs, data or other documentation developed by, given to, prepared by or assembled by Consultant under this contract shall be disclosed or made available to any individual or organization by Consultant without the prior written approval of the City.

28.3 If Consultant receives inquiries regarding documents within its possession pursuant to this contract, Consultant shall immediately forward such request to the City for disposition.

XXIX. EXECUTION IN COUNTERPART

This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

XXX. AUTOPEN OR ELECTRONIC SIGNATURE

This Agreement and any amendments hereto may be signed by autopen or electronic signature (e.g., DocuSign or similar electronic signature technology) and may be transmitted by electronic means. Copies of this Agreement and any amendments hereto that are so executed and delivered have the same force and effect as if executed with handwritten signatures and physically delivered.

XXXI. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

Exhibit A – Consultant's Proposal submitted in response to City's Request for Proposal (RFP) for S_____

XXXII. ENTIRE AGREEMENT

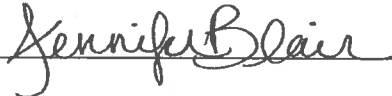
This Agreement, together with its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIII. *Amendments*.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
BLAIR WILDLIFE CONSULTING,
LLC

Director, Development Services
Department


Jennifer Blair, CWB
Owner, Principal Scientist

Date: _____

Date: March 6, 2025 _____

Approved as to Form:

City Attorney