

**PROFESSIONAL SERVICES AGREEMENT
FOR
ECONOMIC IMPACT ANALYSIS SERVICES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation acting by and through its City Manager or his designee, pursuant to City Ordinance No. _____, passed and approved the _____ day of 2024, and Steven R. Nivin Ph.D.,LLC (“Consultant”) both of which may be referred to as the ‘Party’ or collectively as the “Parties.”

The Parties agree, and by the execution of this Agreement are bound, to the mutual obligations and to the performance and accomplishment of the tasks described in this Agreement.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Consultant” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Director” shall mean the director of City’s Economic Development Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement under Article VII Termination, the term of this Agreement shall be for a period of three (3) years and shall commence upon execution by all Parties.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in the document attached hereto and incorporated for all purposes as **Exhibit A. Scope of Services**, in exchange for the compensation described in Article IV, entitled “Compensation.” The services to be provided by Consultant shall be performed in a professional manner in accordance and consistent with the scopes of work, work plans and costs described by City in **Exhibit A**.

3.2 Consultant agrees to work with the City and any affiliated entities to provide any studies or analysis beyond the scope of this Agreement that will be a separately negotiated Agreement with the appropriate Department requesting the work unless the amount of the contract requires the City to conduct a competitive bid process.

3.3 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. 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 VII. 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, should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 The total compensation for all work to be satisfactorily and efficiently performed by Consultant pursuant to this Agreement, to include all travel and other expenses, shall not exceed Forty Eight Thousand Dollars and No Cents (\$48,000.00) per fiscal year of the term of the Agreement, for a total not to exceed Two Hundred Forty Thousand Dollars and No Cents (\$240,000.00) for total compensation, to be paid to Consultant as follows:

Consultant shall bill all services at the labor categories and hourly rates set out in **Exhibit B. Fee Schedule**. Consultant may submit invoices no more than once monthly. Such invoices must be for work actually performed and not previously invoiced and must show: a) the hours being billed delineated by task performed, employee name and position, b) a summary of the service performed during the period covered by the invoiced, and c) the total amount due for services. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges. City shall pay all undisputed amounts due under this Agreement within thirty (30) days of receipt of a properly addressed invoice. The final payment due hereunder will not be paid until all reports, data, and documents have been submitted, received, accepted, and approved by the City.

4.2 Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio Economic Development Department, P.O. Box 839966, San Antonio, Texas 78283-3966. City shall pay such invoices by telegraphic bank transfer net of all duties and bank charges to an account specified by Consultant.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The Parties agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant for the original contract term cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, subject to Article XV. Amendments.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. 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.

4.5 Within ten (10) working days of City's written request therefor, Consultant shall refund to City any sum of money paid by City to Consultant later determined to:

- 4.5.1 Have resulted in overpayment to Consultant;
- 4.5.2 Have not been spent by Consultant strictly in accordance with the terms of the Agreement; or
- 4.5.3 Not be supported by adequate documentation to fully justify the expenditure.

V. OWNERSHIP, LICENSES AND DATA REQUIREMENTS

5.1 Consultant shall be solely responsible for obtaining all intellectual property rights and licenses Consultant requires to provide the services set out in the Scope of Services.

5.2 In accordance with Texas law, Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of

the Texas Government Code. Thus, no such local government records produced by or on the behalf of Consultant pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Consultant.

5.3 The term “local government record” as used in this document means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

5.4 Consultant acknowledges and agrees that all local government records, as described in this document, produced in the course of the work required pursuant to this agreement will belong to and be the property of City. Consultant will be required to turn over to City, all such records as required by said contract. Consultant shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City’s written permission, unless required to do so by a Court of competent jurisdiction.

5.5 Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations governing documents and ownership, access and retention.

5.6 City Data. Consultant agrees to comply with the City’s Data Governance Administrative Directive 7.12 and Data Security Administrative Directive 7.3a in the same manner required of City employees, interns, volunteers, and trainees, for City Data arising out of, resulting from, or related to Consultant’s activities under such contract.

As between City and Consultant, City is and will remain the sole and exclusive owner of all right, title, and interest in and to all City Data, including all intellectual property rights relating thereto, subject only to any limited license expressly granted to Consultant, and Consultant is and will remain the sole and exclusive owner of all right, title, and interest in and to the Consultant materials, including all intellectual property rights relating thereto, subject only to the authorization and license granted to City.

VI. RECORDS RETENTION

6.1 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 under this Agreement (“documents”), and shall make such materials available to the 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, and the record retention period established, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (“retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided, 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 at Consultant's expense.

6.3 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 in this Agreement. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by the City upon fifteen (15) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. In the event of Termination Without Cause, Consultant shall be compensated for any work it has already done pursuant to this Agreement.

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

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

7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such thirty-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.

7.4.1 Failing to perform or failing to comply with any covenant or provision required under this Agreement; or

7.4.2 Performing unsatisfactorily.

7.4.3 Bankruptcy or selling substantially all of company's assets.

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

7.6 Regardless of how this Agreement is terminated, Consultant shall return all unearned payments to City within 30 calendar days of such termination. Payments shall be deemed unearned if they are for work not accepted by City under Sections 3.2 and 4.3.

7.7 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 VI. Records Retention. Any record transfer shall be completed within 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.

7.8 Within 45 calendar days of the effective date of completion, or 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 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 moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.9 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.

7.10 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, 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.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or 3 calendar days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Brenda Hicks-Sorensen, Director
Department of Economic Development
Box 839966
San Antonio, Texas 78283-3966
Email: brenda.hicks-sorensen@sanantonio.gov

If intended for Consultant, to:

Steven R. Nivin Ph.D., LLC
Attn: Steve Nivin
5930 Woodridge Park
San Antonio, Texas 78249 ____

IX. NONDISCRIMINATION

9.1 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.

X. INSURANCE

10.1 No later than 30 days before the scheduled work under this Agreement, CONSULTANT must provide a completed Certificate(s) of Insurance to City's Economic Development Office. The certificate must be:

- clearly labeled with "Economic Impact Analysis Services" in the Description of Operations block;
- 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);
- properly endorsed and have the agent's signature, and phone number.

10.2 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 Economic Development Office. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

10.3 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 the events or activities performed under this Agreement.

10.4 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.

10.5 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:

<u>TYPE</u>	<u>AMOUNTS</u>
*1. Workers' Compensation	Statutory
*2. Employers' Liability	\$500,000/\$500,000/\$500,000

<u>TYPE</u>	<u>AMOUNTS</u>
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability *e. Independent Consultants	For Bodily Injury and Property Damage of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
*4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$250,000 per occurrence
5. Professional Liability (Claims-made Coverage)	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. *Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
*6. Cyber Liability	\$500,000 per claim \$500,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
*If Applicable	

10.6 CONSULTANT must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONSULTANT and provide a certificate of insurance and endorsement that names CONSULTANT and CITY as additional insureds. Consultant shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

10.7 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
Economic Development Department
100 W. Houston St., Ste. 1800
San Antonio, TX 78205

10.8 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 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
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

10.9 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.

10.10 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.

10.11 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.

10.12 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.

10.13 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.

10.14 CONSULTANT and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XI. INDEMNIFICATION

11.1 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, property damage and intellectual property right infringement, 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 performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, 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.

11.2 The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.3 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.

11.4 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.

11.5 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 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.

11. Intellectual Property - 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 performance of services. 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.

Upon receipt of notification that a third-party claim 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:

obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,

alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

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.

Consultant further agrees to:

assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Contract,

assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

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,

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,

the liability claimed shall not have arisen out of the City's negligent act or omission, and 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.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 The use of any subcontractor(s) requires the prior written approval of Director.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees.

12.4 Except as otherwise stated, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of 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 contractor, assignee, transferee or subcontractor.

12.5 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 VII. 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.

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that he or she is 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 Consultant superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties understand and agree that the 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.

XIV. CONFLICT OF INTEREST

14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. 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 individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Consultant further warrants and certifies that it was tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XV. SBEDA PROGRAM

15.1 The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in

hard copy format upon request to the City. Consultant agrees to comply with the SBEDA Ordinance Compliance Provisions attached and incorporated in this Agreement as **Exhibit C**, which Consultant understands are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual. Unless defined in a contrary manner herein, terms used in the SBEDA provisions shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

XVI. AMENDMENTS

16.1 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 City Council approval as evidenced by passage of an ordinance. Notwithstanding the foregoing, the Director may execute amendments that require up to a total of \$25,0000.00 in increased cost on behalf of the City, or amendments unrelated to City funding, without further action by City Council.

XVII. SEVERABILITY

17.1 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 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; it is also the intention of the Parties 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.

XVIII. STANDARD OF SERVICES

18.1 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 service provided herein.

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

XIX. STATE PROHIBITIONS ON CERTAIN CONTRACTS

19.1 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.

19.2 "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.

19.3 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.

Contractor 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 the contract for material breach.

19.4 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).

Contractor 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.

19.5 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.

Contractor 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.

XX. NONWAIVER OF PERFORMANCE

20.1 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 contained in this Agreement. 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 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 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 City Council, when required. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Agreement or by law or in equity.

XXI. LAW APPLICABLE

21.1 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.

21.2 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.

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

XXII. LEGAL AUTHORITY

22.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of its terms, conditions, provisions and obligations.

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

24.1 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.

XXV. INCORPORATION OF EXHIBITS

25.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties. In the event of a conflict between the terms and conditions included in the body of this Agreement and the terms included in any of the attachments hereto, the descending order of precedence shall be (1) this Agreement, and (2) the order as appears below:

- Exhibit A. Scope of Services
- Exhibit B. Fee Schedule
- Exhibit C. SBEDA Ordinance Compliance Provisions

XXVI. ENTIRE AGREEMENT

26.1 This Agreement, together with its exhibits, if any, constitute the final and entire agreement between the Parties 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, unless same be in writing, dated subsequent to the effective date, and duly executed by the Parties, in accordance with Article XV. Amendments.

-----*Signatures to follow*-----

EXECUTED and **AGREED** to by the Parties to be effective upon the date of signature of the last Party to sign.

CITY OF SAN ANTONIO

CONSULTANT

Steven R. Nivin

Name: Erik Walsh
Title: City Manager

Name: Steven R. Nivin
Title: Managing Member and Chief Economist
July 29, 2024

Date

Date

Approved as to Form:

Assistant City Attorney

Exhibit A. SCOPE OF SERVICES

Consultant shall periodically perform economic analyses to determine the potential impact of economic development projects. Consultant will also conduct cost-benefit analyses for various initiatives and revise its' international strategy analysis of focusing on key global markets to increase San Antonio's access through diplomacy, business, culture and education in order to elevate its' reputation as a global leader. These analyses will help to inform staff recommendations and City Council policies and are vital in ensuring the most efficient utilization of City resources.

Consultant shall, when applicable or requested by city staff, focus on various regional economic development issues, creative economy development, the economics of arts and culture, economic inequality, complexity/network economics, public policy analysis and environmental economics.

The Consultant shall, from time to time and at the direction of City, provide the following services to City:

- i. Update the international strategic plan (Metro Priority Plan/Passport San Antonio – to be completed by August 2024).
- ii. Create and review cost-benefit analyses and economic impact analyses as requested for EDD and other City departments
- iii. Evaluate impact of economic development projects.
- iv. Evaluate economic sections of the City Annual Financial Report, the Budget Transmittal Letter, and City Bond documents.
- v. Conduct Tax Increment Reinvestment Zone feasibility studies.
- vi. Evaluate impact of events as requested by the Convention and Visitors Bureau, the Convention and Sports Facilities Department, and other City departments.
- vii. Conduct other similar and related tasks as needed including, but not limited to, data analyses, production of reports, GIS analyses, etc
- viii. Brief City Council, City staff, and other City-sponsored entities on research and analysis completed.
- ix. All requests must be completed in a timely manner, often with a quick turnaround time dependent on the request.

The Consultant shall also work with the City and any affiliated entities to provide any studies or analysis beyond the scope of this Agreement that will be a separately negotiated Agreement with the appropriate Department.

Exhibit B. Fee Schedule

Pricing proposed shall include all costs associated with the performance of the services specified, including materials, supervisions, labor, transportation, delivery and other related costs. No other charges shall be charged by Consultant or paid by City, unless agreed to in writing and in accordance with the amendment provisions in the Agreement.

The below Price schedule is to reflect services performed within the scope of services.

NOTE: Up to 4240,000.00 will be allocated for the full contract term (up to \$48,000 annually). This budget amount is inclusive of all aspects of the Scope of Services.

Contract Period	Number of hours anticipated to work yearly	Hourly Rate	Extended Total
Year One	240	\$ <u>200.00</u>	\$ <u>48,000.00</u>
Year Two	240	\$ <u>200.00</u>	\$ 48,000.00
Year Three	240	\$ <u>200.00</u>	\$ <u>48,000.00</u>
Renewal Years:			
Year Four	240	\$ 200.00	\$ 48,000.00
Year Five	240	\$ 200.00	\$ 48,000.00
TOTAL FOR ALL YEARS			\$ \$240,000.00

Exhibit C. SBEDA ORDINANCE COMPLIANCE PROVISIONS

