

**PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL CONSULTING FOR
COMMUNICATIONS AND MARKETING**

STATE OF TEXAS

§

COUNTY OF BEXAR

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This Professional Services Agreement ("this Agreement") is by and between the City of San Antonio ("the City"), a Texas municipal corporation, and

FPO
8035 Broadway
San Antonio, Texas 78209

("the Consultant"). The City executes this Agreement according to the City Charter and the ordinances and resolutions of the City Council. Likewise, the Consultant executes this Agreement for the Services described in this Agreement.

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

TABLE OF CONTENTS

| | |
|---|----|
| I. DEFINITIONS..... | 4 |
| II. TERM..... | 5 |
| III. SERVICES | 6 |
| IV. PROJECT INSPECTION SERVICES REQUEST PROCESS | 7 |
| V. COMPENSATION | 7 |
| VI. METHOD OF COMPENSATION..... | 9 |
| VII. OWNERSHIP OF DOCUMENTS | 12 |
| VIII. RETENTION OF RECORDS | 14 |
| IX. TERMINATION..... | 14 |
| X. NOTICES..... | 16 |
| XI. INSURANCE | 16 |
| XII. INDEMNIFICATION | 19 |
| XIII. ASSIGNMENT AND SUBCONTRACTING | 21 |
| XIV. INDEPENDENT CONTRACTOR | 22 |
| XV. INTEREST PROHIBITED IN THE CITY'S CONTRACTS..... | 22 |
| XVI. AMENDMENTS..... | 23 |
| XVII. CLAIMS..... | 23 |
| XVIII. SEVERABILITY | 25 |
| XIX. LICENSES/CERTIFICATIONS..... | 25 |
| XX. COMPLIANCE | 25 |
| XXI. NONWAIVER OF PERFORMANCE | 26 |
| XXII. APPLICABLE LAW AND LEGAL FEES..... | 26 |
| XXIII. LEGAL AUTHORITY..... | 26 |
| XXIV. PARTIES BOUND | 27 |
| XXV. CAPTIONS..... | 27 |
| XXVI. INCORPORATION OF EXHIBITS | 27 |
| XXVII. COMPLIANCE WITH THE TEXAS GOVERNMENT CODE CHAPTERS 2252, 2270, 2271, AND 2274 | 27 |
| XXVIII. ENTIRE AGREEMENT | 27 |
| XXIX. SIGNATURES..... | 29 |
| XXX. EXHIBIT 1: SCOPE OF SERVICES | 30 |
| XXXI. EXHIBIT 2: HOURLY RATES..... | 37 |

XXXII. EXHIBIT 3: HEAT ILLNESS PREVENTION ORDINANCE (ORDINANCE 2023-08-31-0585)..... 38

XXXIII. EXHIBIT 4: SOLID WASTE DISPOSAL ACT 39

I. DEFINITIONS

- A. **“Agreement”** means this Agreement.
- B. **“Application for Compensation”** means the Consultant’s request to receive payment to complete the work.
- C. **“City”** means the City of San Antonio and its authorized representatives.
- D. **“Claim”** means a demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of this Agreement’s terms and conditions, the payment of money, an extension of time, or other relief concerning this Agreement’s terms and conditions. A Claim may include other matters arising from or relating to this Agreement between the Parties.
- E. **“Consultant”** means the Consultant and any employee, Sub-consultant, subcontractor, supplier, or other under the Consultant’s responsibility.
- F. **“Director”** means the director of the Transportation Department or her designee.
- G. **“Files”** means all documents, papers, records, and other materials related to the Services or Consultant’s performance under this Agreement.
- H. **“Party”** means the City or Consultant.
- I. **“Parties”** means the City and Consultant.
- J. **“Project”** means the enterprise that the City requires the Consultant to complete as a part of the Services.
- K. **“Proposal”** means the Consultant’s plan to provide the work for a Project.
- L. **“Record-Retention Period”** means four (4) years after the termination of this Agreement.
- M. **“SAMSA”** means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which comprises Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.
- N. **“Services”** means the professional services described in more detail in Exhibit 1: Scope of Services under this Agreement.
- O. **“Task Order”** means an order issued to perform tasks or pieces of work to complete a Project under this Agreement. A Task Order includes a Scope of The work.

- P. **“Scope of The work (SOW)”** means the document that describes the specific tasks, deliverables, and responsibilities required to complete a Project under a Task Order. The SOW includes the costs associated with a Task Order.

II. TERM

- A. Unless sooner terminated under the terms and conditions of this Agreement, the term shall commence upon the City Council’s approval and Parties’ execution of the first Task Order and terminate one (1) year from such time.
- B. Under the enabling ordinance, the City may extend this Agreement for up to two (2) one-year (1-year) extensions. Each extension shall be in writing and signed by the City Manager, his designee, or the Director without further action from the City Council.
- C. Time is of the essence. Considering the professional skill and care of a professional in the Consultant’s shoes, the Consultant shall render prompt and prudent performance to avoid delaying a Project given the timeline approved by the City. Upon review of a Task Order, if corrections, modifications, alterations, or additions are required, the Consultant shall complete them before the Task Order’s approval. The City shall review and approve the completed actions promptly and continuously to avoid delaying the Project.
- D. The Consultant shall not proceed with a subsequent Task Order without the City’s written authorization. The City may discontinue utilizing the Consultant at the end of any Task Order for any reason or no reason. However, the City retains the right to adjust the SOW under a Task Order at any time. If the circumstances allow, the City may change the SOW to achieve its desired outcome.
- E. The Consultant shall not be liable for any delays owing to strikes, riots, acts of God, national emergencies, acts of the public enemy, governmental restrictions, laws, regulations, or any other causes beyond the Consultant’s reasonable control. Within twenty-one (21) days from the occurrence of any such event, the Consultant shall give written notice to the City about the reason for an extension and the actual or estimated time for completion. If granted, the extension shall be adequate to allow the Consultant to complete its performance under this Agreement. However, if the City determines that the Consultant is liable for the extension, the City shall have the right to file a claim as provided in this Agreement.
- F. According to the City’s determination about the required period, this Agreement shall remain enforceable to allow the design, award of the contract, and completion of a Project, including extra work or required extensions, unless this Agreement terminates as provided for under this Agreement.

- G. If the City does not appropriate adequate funding at the time of this Agreement's execution, it retains the right to terminate this Agreement at the expiration of its budgetary periods. Any extension is also subject to and contingent upon an appropriation of adequate funding. The City may terminate this Agreement whenever funding is restricted, withdrawn, or unauthorized or if the Consultant's performance fails to comply with Section E of Article III Services.

III. SERVICES

- A. The Consultant understands and agrees that the City may enter multiple professional services agreements with other consultants and has the authority to issue Task Orders at its discretion. According to Article V.B.2, the Consultant understands and agrees that the City does not guarantee the minimum amount of the work for the Consultant under this Agreement, if any.
- B. This Agreement is an indefinite delivery, indefinite quantity (IDIQ) contract. In other words, the contract is designed to be flexible because the work is recurring, and the delivery times and amount of the work are indefinite. Concerning the type of work, this Agreement deals with consulting for communications, marketing, and related Services, described in more detail in Exhibit 1: Scope of Services.
- C. Under this Agreement, issued and accepted Task Orders shall be incorporated into and become a part of this Agreement. The Consultant shall perform all tasks and related actions to complete such tasks under a Task Order. A Task Order may include the requirements for a Project's location, conditions, associated actions, and procedures.
- D. The Consultant shall render performance according to the SOW included in a Task Order and the Consultant's hourly rates, attached to and incorporated into this Agreement as Exhibit 2: Hourly Rates. A comprehensive SOW shall be included in the Consultant's Proposal, which combines the City's edits following negotiation and receives the Director's approval.
- E. The Consultant shall render performance to the Director's satisfaction. The Director's determination shall be final and binding on the Parties. The City shall have no obligation to compensate the Consultant for unsatisfactory performance. Under Article IX Termination, the City shall have the right to terminate this Agreement, in whole or part, if the Consultant's performance is unsatisfactory. If the City terminates this Agreement, in whole or part, it shall comply with the provisions of "Defaults with Opportunity for Cure" under this Agreement. However, the City shall have no obligation to terminate this Agreement in whole or part. The City may also withhold payment for unsatisfactory performance under a Task Order if the work does not meet the requirements described in an approved Proposal, even if it chooses not to terminate in whole or part. In such a case, the City shall provide written notice to the Consultant.
- F. The Consultant's hourly rates are incorporated by reference into this Agreement and are included as Exhibit 2: Hourly Rates.

IV. PROJECT INSPECTION SERVICES REQUEST PROCESS

- A. A Task Order may include the requirements for inspecting a Project's progress.
- B. When the City desires to procure on-call consulting for communications, marketing, and related Services concerning a Project, it shall notify the Consultant through a proposed Task Order request in *PRIMELink*. A proposed Task Order request shall include the following: the Project's name; the Project's location; copies of or access to the Project's documentation, such as standards and specifications, to prepare a Proposal; the Project's timeline, including specific deadlines for performance, if any; Project-specific insurance requirements, which may require additional types or higher levels of coverages than required under the Agreement; and a deadline to provide the City with a Proposal based on the preceding items.
- C. Within the deadline stated in a proposed Task Order request, the Consultant shall prepare and submit a Proposal that includes the SOW, specific staffing, and an estimate of the Task Order's cost based on the hourly rates described in more detail in Exhibit 2: Hourly Rates. The Consultant shall submit the Proposal in editable electronic format through *PRIMELink*. By submitting a Proposal, the Consultant agrees to perform the requested work within the timeframe established in the proposed Task Order request.
- D. The Parties shall negotiate a firm Proposal. Once they agree on the SOW, specific staffing, the Project's total cost, and a timeline, the City shall issue a finalized Task Order through *PRIMELink* for the Parties' acceptance. Such acceptance shall evidence the agreed-to SOW and the Project's total cost.
- E. The Director has the authority to execute a finalized Task Order in *PRIMELink* on behalf of the City, provided it is within the spending authority approved by the enabling ordinance and funds are budgeted for the Project.
- F. The Consultant shall not proceed with the work until the Parties have negotiated and accepted a finalized Task Order, the Consultant receives a written notice to proceed from the City, and the City receives all required documents from the Consultant before the commencement of the work, including proof of insurance. The Consultant assumes the sole risk and expense, which may not be reimbursable, for any the work performed or costs incurred before receiving a written notice to proceed or after the termination of a finalized Task Order or this Agreement.
- G. Actual amounts billed shall not exceed the total amount established in a finalized Task Order.
- H. The City shall not pay, and the Consultant shall not invoice, for the time or expense incurred owing to the process associated with a proposed Task Order request for a Project, including the development of a Proposal and negotiation of such and the finalized Task Order.

V. COMPENSATION

- A. In exchange for the Consultant's satisfactory and efficient performance, subject to Section E of Article III Services, the compensation is the aggregate total of authorized and executed Task Orders for expenditures not exceeding the spending authority approved by the enabling ordinance. The compensation **SHALL NOT EXCEED TWO MILLION FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$2,450,000.00)** for the term and any extensions.
- B. The Consultant shall submit a Proposal for each Project under this Agreement. The City will approve or deny the Proposal. The City's approval will take the form of a Task Order executed by both Parties in PRIME*Link*. Task Orders shall number sequentially, starting with the number one (1), reference this Agreement, and be in PRIME*Link*. Each executed and finalized Task Order, as inputted on PRIME*Link*, shall become a part of this Agreement.
1. The Consultant understands and agrees that the City may enter multiple professional services agreements with other consultants and is authorized to issue Projects, Services, or Task Orders at its sole discretion.
 2. The Consultant understands and agrees that the City does not guarantee the minimum amount of the work for the Consultant under this Agreement, if any.
- C. Each Task Order's price shall be proportional to the SOW for a Project and comply with the not-to-exceed hourly rates described in more detail in Exhibit 2: Hourly Rates.
- D. Reimbursable Expenses. The City maintains the right of prior approval of any reimbursable expenses of the Consultant. The City shall not pay any costs not agreed to or accepted in writing before executing this Agreement. Suppose the Consultant, an employee, a Sub-consultant, a subcontractor, or a vendor makes an unapproved expense before or after this Agreement's execution. In that case, such expense shall be the sole responsibility of the Consultant and not the City. Following the City's written approval, the Consultant shall be entitled to reimbursement of the actual costs incurred because of performance under this Agreement.
1. Travel expenses outside SAMSA. If the City provides written approval of travel expenses before travel, reimbursement shall be limited to the costs directly related to the Consultant's performance under this Agreement. Travel expenses are restricted to the per diem rates established annually by the Federal Government's General Services Administration; they shall not exceed the ceiling set by the Transportation Department without further approval from the City. The Consultant shall provide itemized receipts for all reimbursable travel expenses. The City shall not reimburse the Consultant for travel expenses within SAMSA.
 2. Mailing, courier services, and copies of documents. Suppose the City provides a written request for mailing, courier services, or copies of documents above the number required under this Agreement. In that case, the expenditure shall not exceed the ceiling set by the Transportation Department without further approval from the City.

3. Graphics, physical models, and presentation boards. Suppose the City provides a written request for graphics, physical models, or presentation boards above the number required under this Agreement. In that case, the expenditure shall not exceed the ceiling set by the Transportation Department without further approval from the City.
4. The City shall not allow a markup on any reimbursable expenses described above. The City shall only reimburse actual costs incurred with its prior written approval.

VI. METHOD OF COMPENSATION

- A. The Consultant's payments shall reflect the amounts shown on the invoices and be consistent with an issued Task Order and its supporting documentation, subject to the City's approval. The Consultant shall perform all tasks to the Director's satisfaction. Accordingly, the City shall not be liable for any payment under this Agreement for the tasks deemed unsatisfactory or unauthorized by the Director. The City shall not pay the final payment due until the Consultant submits all reports, data, and documents and the City receives, accepts, and approves them.
 1. The City may make payments based solely on the tasks completed and approved and the associated price per unit for a task, as described in the Proposal and approved Task Order.
 2. The Director shall review monthly payments for additional work performed upon the Consultant's inputting invoices in PrimeLink with the required backup and reference to the specific Task Order. Inputted invoices shall indicate the value of the additional work performed to date on the Task Order and any other invoices inputted or payments made related to the Task Order.
- B. Within ten (10) days after receiving compensation from the City, the Consultant shall pay all employees, sub-consultants, subcontractors, suppliers, and others under its responsibility for the work on a Project. The Consultant shall also provide the City with evidence of such payment if requested. Suppose the Consultant fails to pay within ten (10) days. In that case, such failure shall constitute a material breach of this Agreement unless the Consultant can demonstrate a bona fide dispute with an unpaid employee, sub-consultant, subcontractor, supplier, or other under its responsibility and the provided the work. The Consultant shall impose the same obligation to pay on its employees, sub-consultants, subcontractors, suppliers, and others under its responsibility in each sub-agreement or subcontract; if the City requests, they shall provide copies of the payments to the City. Suppose the Consultant fails to promptly pay an employee, sub-consultant, subcontractor, supplier, or other under its responsibility for the work for which it received compensation. In that case, the City shall have the right to withhold payment from the Consultant to the extent necessary to protect itself.
- C. The Consultant warrants the following:

1. Upon payment to the Consultant, the City shall hold all title to the work covered by an Application for Compensation.
 2. To the best of the Consultant's belief, knowledge, and information, when it submits an Application for Compensation, the the work covered by previous Applications for Compensation and paid by earlier payments from the City shall be free and clear of all liens, claims, security interests, and encumbrances in favor of itself or anyone making a claim owing to the work provided under this Agreement.
 3. The Consultant shall indemnify and hold the City harmless from all liens, claims, security interests, or encumbrances filed by anyone claiming by, through, or under the items covered by payments from the City to the Consultant.
- D. The Consultant may request partial compensation before a Task Order's completion. The request shall include a progress report detailing the work performed. Any partial compensation shall be proportional to the tasks performed, as reflected in the progress report and approved by the Director, at the City's sole discretion. As the foundation to calculate partial compensation, the City may use the completed and approved tasks or the associated price per unit for each task, as described in the Proposal.
- E. Close-Out of a Project and Final Payment
1. The Consultant's final bill shall indicate: "Final Bill—No Additional Compensation is Due to the Consultant."
 2. The City may withhold compensation to such an extent necessary, in its opinion, to protect itself from damage or loss for which the Consultant is responsible owing to
 - a) Delays in the performance of the work;
 - b) Third-party claims filed, or reasonable evidence indicating probable filings of such claims, unless the Consultant provides security acceptable to the City;
 - c) The Consultant's failure to pay employees, sub-consultants, subcontractors, suppliers, or others under its responsibility for labor, materials, equipment, or the work;
 - d) Reasonable evidence that the work cannot be finished for the unpaid balance under an issued Task Order or this Agreement;
 - e) Damage to the City; or
 - f) The Consultant's persistent failure to perform satisfactorily and efficiently under this Agreement.

3. When the Consultant removes or remedies the mentioned reasons for withholding, the City shall compensate it for the amount withheld within a reasonable time. The City shall not be deemed in default because of withholding compensation from the Consultant, as provided in this Article.
 - a) In the event of a dispute between the Parties concerning the amount adequately compensable for the work or as final compensation or about any amount that the City may withhold, the Consultant shall be required to make a claim under and by the terms and conditions of this Agreement and follow the procedures provided in this Agreement for the resolution of such a claim. If the Consultant fails to initiate a claim or follow the procedures to file a claim under this Agreement on time and in compliance with the terms and conditions of this Agreement, any such claim shall be deemed waived by the Consultant.
 - b) The City shall provide final compensation for all amounts due to the Consultant within thirty (30) days after the Consultant prepares and delivers a mathematically correct and acceptable final Application for Compensation.
 - c) The Consultant's accepting final compensation shall constitute a **WAIVER** of all claims except previous ones made in writing and identified by the Consultant as unsettled when the Consultant submits its final Application for Compensation.
 - d) The Consultant agrees to maintain adequate books, payrolls, and records related to the work under this Agreement in forms satisfactory to the City. The Consultant also agrees to retain all such books, payrolls, and accounts, including data stored on a computer, for not fewer than four (4) years after the work's completion unless a dispute concerning a Project or its performance is ongoing. If any litigation occurs, upon notice from the City, the Consultant shall retain its books, payrolls, and records for more than four (4) years after the work's completion and for as long after four (4) years per the City's request. At all reasonable times, the Consultant shall provide the City and its duly authorized representatives with access to all its personnel, books, payrolls, and records, and the City shall have the right to audit the same.
- F. Internet-Based Project Management System. The City shall administer tasks through an Internet-based project management system called "PRIMELink." The Consultant shall use PRIMELink to communicate with the City and perform all tasks. Communications may include correspondences, submissions, requests for information, vouchers, requests for and processing compensation, amendments, change orders, and other administrative actions. The City shall administer the software and make it accessible to the Consultant's necessary personnel via the Internet. The Consultant shall submit all invoices through PRIMELink.
- G. The City shall compensate the Consultant within thirty (30) days of receiving an invoice and having the Director approve it.
- H. In the event of early termination of this Agreement for any reason, the Consultant shall return any unearned compensation within fifteen (15) days of such termination.

- I. The Consultant shall not charge any additional fees or expenses, and the City shall not pay for any additional costs or fees.
- J. The City's written approval is required for the final acceptance of the work. The approving official shall be the Director. The Consultant will receive the final payment upon the Director's written approval. The City shall not owe any obligation to or bear any liability concerning any party under this Agreement other than the Consultant for the payment of any money or the provision of any goods or services.

VII. OWNERSHIP OF DOCUMENTS

- A. Following Texas law, the Consultant acknowledges and agrees that all Local Government Records are public property and fall under the provisions of Chapter 201 and Chapter 441, Subchapter J of the Texas Local Government Code. Local Government Records include (1) records created or received by the City, its officials, or its employees under law, including under an ordinance; (2) records created or received as part of the official business of the City; or (3) records created or maintained with public funds. The Consultant shall make no copyright or proprietary claim concerning Local Government Records produced under this Agreement.
- B. Concerning the type of record, a Local Government Record includes a document, paper, letter, book, map, photograph, audio or visual recording, microfilm, magnetic tape, electronic medium, or any other information-recording medium regardless of physical form or characteristic and whether public access is open or restricted to it under Texas law.
- C. Throughout the performance of this Agreement, the Consultant (1) acknowledges and agrees that all Local Government Records shall be the property of the City; (2) shall submit all such records to the City; and (3) shall not release any, except to the City, without written permission unless it is complying with an order by a court of competent jurisdiction.
- D. The Consultant agrees to comply with all applicable federal, state, and local laws, rules, and regulations governing access to, retention, and ownership of documents.
- E. Intellectual Property The Consultant agrees to comply with the following requirements for intellectual property rights.
 - 1. The Consultant shall pay all royalties and licensing fees. The Consultant shall indemnify and hold the City harmless from the payment of any royalties, damages, losses, or expenses, including attorney's fees for suits, claims, or the like, arising from infringement or alleged infringement of copyrights, patents, materials, and methods used in the performance of the work. The Consultant shall defend all suits alleging infringement upon any intellectual property rights. In addition, suppose the Consultant has reason to believe that the design, service, process, or product specified infringes upon an intellectual property right. In that case, the Consultant shall inform the City without delay.

2. Upon receiving notification that a third party claims that the program(s), hardware, or both infringe upon any United States patent or copyright, the Consultant shall do one of the following.
 - a) At its sole expense, obtain the necessary license(s) or rights that allow the City to continue using the program(s), hardware, or both.
 - b) Alter the program(s), hardware, or both to eliminate the alleged infringement and reimburse the City for any expenses incurred to implement backup measures because it cannot use the program(s), hardware, or both while the dispute is pending.
3. The Consultant 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 using or selling the equipment or software under this Agreement. The Consultant also agrees to assume the expense of such defense, including the costs of investigations, reasonable attorneys' fees, fees for an expert witness, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages or costs awarded in such a claim, suit, or proceeding. The following conditions apply to the Consultant's obligations under this Subsection:
 - a) The Consultant has the exclusive and sole control of all negotiations related to the settlement of the defense but agrees to consult the City Attorney during such negotiations or defense and make a good-faith effort to avoid any position opposed to the City's interests.
 - b) The City uses the equipment or software in the form, state, or condition delivered by the Consultant or modified without the Consultant's permission, provided such modification is not the source of the infringement claim.
 - c) The liability claimed cannot arise from the negligence of the City, and the City must provide written notice to the Consultant within fifteen (15) days following the formal assertion of any claim that the City asserts that the Consultant is obliged to assume under this Subsection.

F. The City's Data

1. The 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 the City's employees, interns, volunteers, and trainees concerning the City's data arising, resulting from, or related to the Consultant's activities under this Agreement.

2. The City is the exclusive and sole owner of all rights, title, and interest in and to all its data, including all intellectual property rights related to such data, subject only to any limited license granted expressly to the Consultant. Likewise, the Consultant is the exclusive and sole owner of all rights, title, and interest in and to its materials, including all intellectual property rights related to such materials, subject only to the authorization and license granted to the City.

VIII. RETENTION OF RECORDS

- A. The Consultant shall accurately, completely, and adequately maintain all documents, papers, records, and other materials related to the Services or Consultant's performance under this Agreement (the "Files") and make such Files available to the City at its respective offices at all reasonable times and as often as necessary during the term of this Agreement, including any extension or renewal of such term, and the Record-Retention Period. The City may audit, inspect, examine, or make excerpts or copies of the Files.
- B. The Consultant shall retain all Files produced because of the Services or its performance under this Agreement for four (4) years from the date of termination of this Agreement (the "Record-Retention Period"). If, at the end of the Record-Retention Period, there is litigation or other questions arising from, involving, or concerning the Files, Services, or the Consultant's performance under this Agreement, the Consultant shall retain the Files until such litigation or other questions are resolved. The Consultant acknowledges and agrees that the City shall always have access to the Files during the Record-Retention Period. The City may require the Consultant to return the Files at the Consultant's sole cost and expense before or after the Record-Retention Period. In such a case, the Consultant may retain a copy of the Files at its sole cost and expense.
- C. The Consultant shall immediately notify the City after receiving third-party requests for information about the Files. The Consultant agrees that the City will process and handle such requests.

IX. TERMINATION

- A. Under this Agreement, "termination" means termination by expiration of the term or earlier termination under Sections B–D.
- B. Termination without Cause. Either Party may terminate this Agreement upon written notice of fifteen (15) calendar days. Such notice shall comply with Article X Notices. If the City terminates this Agreement without cause, it shall only be liable for the payment of the Consultant's performance rendered up to termination.
- C. Termination for Cause. The City may terminate this Agreement in whole or part upon written notice, which shall comply with Article X Notices. Such termination shall be effective from the date stated in such notice upon the occurrence of one (1) or more of the following events, which each shall be an event for cause under this Agreement:

1. Sale, conveyance, transfer, pledge, or assignment of this Agreement without prior approval according to Article XIII Assignment and Subcontracting or
 2. Any material breach of the terms and conditions of this Agreement upon the City's sole determination.
- D. Default with Opportunity to Cure. If the Consultant defaults in the performance of this Agreement in a manner described in this Section, such default shall be an event of default. Under Article X Notices, the City shall deliver written notice of such default to the Consultant within ten (10) to fifteen (15) days of the event giving rise to default. The Consultant shall be able to rectify such default within thirty (30) days after receiving written notice. If the Consultant fails to do so within the term of this Agreement, the City shall have the right to terminate this Agreement, at its sole discretion, in whole or part, without further notice to the Consultant. The City shall also have the right to contract another consultant to complete the work. In such a case, the City may offset the costs of a new agreement with another consultant against the Consultant's future or unpaid invoice(s) subject to its duty of mitigating its losses to the extent required by law.
1. Bankruptcy or the sale of substantially all the Consultant's assets,
 2. Failure to comply with the terms and conditions of this Agreement, or
 3. Unsatisfactory performance.
- E. Termination by Law. If any authoritative body enacts or promulgates any federal, state, or local law, rule, or regulation and such law, rule, or regulation prohibits the performance of any of the obligations under this Agreement, or if any authoritative body interprets such law, rule, or regulation to prohibit such performance, then this Agreement shall automatically terminate upon the effective date of such prohibition.
- F. Upon termination, the Consultant shall affect an orderly transfer of the Files to the City or such City-designated person(s) or firm(s), without regard to the medium of storage, upon the City's request and at no additional cost. Otherwise, the Consultant shall retain the Files according to Article VIII Retention of Records. The Consultant shall complete any transfer of the Files within thirty (30) calendar days of the City's written request and at the Consultant's sole cost and expense. As a condition of the compensation due to the Consultant, the Consultant shall deliver all Files upon the City's request. The Consultant shall return all City-owned property, equipment, or materials in its possession or control to the City and remove any Consultant-owned property, equipment, or materials from locations of the City.

- G. Within forty-five (45) calendar days of the effective date terminating this Agreement, the Consultant shall submit detailed claims for unpaid amounts owing to the work performed through the effective date under this Agreement. If the Consultant fails to comply, its failure shall negate any liability on the City's part and constitute a **WAIVER** of all rights to or claim for the collection of amounts owed potentially to it for the work performed under this Agreement.
- H. Upon termination, the Consultant shall cease performing any of the work.
- I. Termination Not the Sole Remedy. If the City terminates this Agreement without regard to cause or any other reason, such termination shall not constitute a selection of its remedies. In addition, such termination shall not limit its right to seek damages from or pursue legal action against the Consultant for any default or other action under this Agreement.

X. NOTICES

Notices to the City

Under this Agreement, notices required or appropriate shall be sufficient if written, mailed (certified mail and postage prepaid), and addressed to the following addresses:

City of San Antonio
Transportation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

Or to such other address designated in writing by the City Manager occasionally.

Notices to the Consultant

Under this Agreement, notices required or appropriate shall be sufficient if written, mailed (certified mail and postage prepaid), and addressed to the following address:

[Organization]
[Number and Street]
[City, State Zip Code]

Or to such other address that the Consultant may provide in writing to the City on file with the City Clerk.

XI. INSURANCE

- A. At least thirty (30) days before the scheduled Services, the Consultant must provide a completed Certificate(s) of Insurance to the Transportation Department under this Agreement. The certificate must be:

1. Clearly labeled with the legal name of the event in the Description of Operations block;
2. Completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (The City will not accept a Memorandum of Insurance or Binders as proof of insurance); and
3. Properly endorsed and have the agent's signature and phone number.

Certificates may be mailed or emailed directly from the insurer's authorized representative. The City shall have no duty to pay or perform under this Agreement until the City's Transportation Department receives and approves such certificate and endorsements. No officer or employee other than the City's Risk Manager shall have the authority to waive this requirement.

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

- B. The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles before the scheduled event or during the effective period of this Agreement because of increased exposure to risk based on court decisions or changes in statutory law or the insurance market.
- C. The Consultant shall obtain and maintain, in full force and effect for the term of this Agreement at its 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, it must provide a copy of its declaration page so the City can review its deductibles:

| | |
|--|--|
| 1. The workers' Compensation 2. Employers' Liability | Statutory \$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. Contractual Liability e. Independent Contractors | For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate |
| 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 \$1,000,000 per occurrence. |
| 5. Professional Liability | \$1,000,000 per claim damages because of any act, malpractice, error, or omission in the professional service. |

- D. The Consultant must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of the Consultant and supply certificates of insurance and endorsements that name the Consultant and City as additional insureds. The Consultant shall provide the City with the subcontractors' certificates and endorsements before the subcontractors start the work.
- E. If a loss results in litigation, the City is entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements. The Consultant must comply with such requests within ten (10) days by submitting the requested insurance documents to the City at the following address:

City of San Antonio
Transportation Department
P.O. Box 839976
San Antonio, TX 78228

- F. The Consultant's insurance policies must contain or be endorsed to include the following provisions:
1. Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement concerning the operations and activities of, or on behalf of, the named insured performed under contract with the City. The endorsement requirement does not apply to the workers' compensation and professional liability policies.
 2. Endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy. The City's insurance does not apply in the event of a claim.

3. The Contractor shall submit a waiver of subrogation to include the workers' compensation, employers' liability, general liability, and auto liability policies in favor of the City and
 4. Provide thirty (30) days advance written notice directly to the City of any suspension, cancellation, non-renewal, or material change in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal, the Consultant shall provide the City with a replacement Certificate of Insurance and applicable endorsements. The City shall have the option to suspend the Consultant's performance should coverage lapse during the term of this Agreement. Failure to provide and maintain the required insurance shall constitute a material breach of this Agreement.
- H. In addition to any other remedies that the City may have upon the Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the required time frame, the City may order the Consultant to stop the work, withhold any payment(s) that become due to the Consultant under this Agreement, or both until the Consultant demonstrates its compliance with the requirements.
- I. Under this Agreement, nothing shall be construed to limit the extent to which the Consultant may be held responsible for payments of damages to persons or property resulting from the Consultant's or its subcontractors' performance of the Services under this Agreement.
- J. The Consultant's insurance shall be primary and non-contributory concerning any insurance or self-insurance carried by the City for liability arising from the operations under this Agreement.
- K. The insurance required is in addition to and separate from any other obligation under this Agreement. The City shall not be limited to the insurance coverage provided in case of a claim or action by or on its behalf.
- L. The Consultant and any subcontractors are responsible for all damage to their equipment or property resulting from their negligence.

XII. INDEMNIFICATION

- A. The CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS the CITY and the elected officials, officers, directors, employees, volunteers, and representatives of the CITY, individually and collectively, from and against 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 the CONSULTANT'S activities under this Agreement, including any acts or omissions of the CONSULTANT; any agent, officer, director, employee, representative, contractor, or Sub-consultant of the CONSULTANT; and their respective agents, officers, directors, employees, and representatives during the exercise of the rights or performance of the obligations under this Agreement. This indemnity shall not apply to any liability resulting from the negligence of the CITY, its officers, or its employees where such negligence causes personal injury, death, or property damage. IF A COURT OF COMPETENT JURISDICTION FINDS THE CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE COMPARATIVE UNDER THE LAWS OF THE STATE OF TEXAS. HOWEVER, SUCH FINDING SHALL NOT WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER THE LAWS OF THE STATE OF TEXAS. IN ADDITION, SUCH FINDING SHALL NOT WAIVE ANY DEFENSES AVAILABLE TO THE PARTIES UNDER THE LAWS OF THE STATE OF TEXAS. The CONSULTANT agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS the CITY from all claims involving patent infringement, trademarks, trade secrets, and copyrights on goods and services supplied.
- B. This INDEMNIFICATION is 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. The CONSULTANT shall (1) advise the CITY in writing within 24 hours after the CONSULTANT'S receipt of actual notice, without any duty of independent inquiry or investigation, concerning any claim or demand against the CITY or CONSULTANT if such claim or demand is known to the CONSULTANT and related to or arising out of the CONSULTANT'S activities under this Agreement and (2) see to the investigation and defense of such claim or demand at the CONSULTANT'S cost and expense. The CITY shall have the right, at its option, cost, and expense, to participate in such defense without relieving the CONSULTANT of any of its obligations under this paragraph.
- C. Defense Counsel. The City shall have the right to select or approve defense counsel that the Consultant retains to fulfill its obligation to defend and fully indemnify the City unless the City expressly waives such right in writing. The Consultant shall retain City-approved defense counsel within seven (7) days of the City's written notice that it is invoking its right to indemnification under this Agreement. If the Consultant fails to retain defense counsel within such period, the City shall have the right to retain defense counsel on the Consultant's behalf. Accordingly, the Consultant shall be liable for all costs and fees incurred by the City. The City shall also have the right, at its option, to select and procure advisory counsel at its expense without waiving the preceding.

- D. Employee Litigation. In all claims against any Party indemnified by the Consultant's employees, Sub-consultants, or subcontractors; by anyone employed directly or indirectly by any of them; or by anyone whose acts impute liability to any of them, the obligation to provide indemnity shall not be limited in any way by any limitation concerning the amount or type of harm, compensation, or benefits payable by the Consultant to any employee, Sub-consultant, or subcontractor under the workers' compensation or other employee-benefits acts.

XIII. ASSIGNMENT AND SUBCONTRACTING

- A. The Consultant shall supply qualified personnel to complete the work as necessary. Such personnel shall be the Consultant's employees, sub-consultants, or subcontractors. The Consultant and its employees, sub-consultants, and subcontractors shall perform all the work.
- B. The City understands and enters this Agreement relying on such understanding that the Consultant intends to use the following sub-consultants and subcontractors to perform under this Agreement: [Sarah Figueroa & Meenakshi Gautam, Yolanda Goznales & Team, Bianca Perarita, Tanya Sammis] The Director shall approve any deviation from the list of sub-consultants and subcontractors, including additions, deletions, or substitutions, before they perform any of the work.
- C. Concerning the work approved for subcontracting, the Consultant shall subcontract such work through a written contract, and such written contract shall be subject to the terms and conditions of this Agreement unless the City grants a specific waiver in writing. The Consultant shall be responsible for sub-consultants' and subcontractors' compliance with this Agreement. The City shall have no obligation to any third parties, including sub-consultants and subcontractors, for the performance of the work or payment of compensation. Under this Agreement, the terms "sub-consultant," "subcontractor," "assignee," and "transferee" shall have the meanings approved by the City Council.
- D. The Consultant shall not sell, convey, assign, transfer, or pledge any interest under this Agreement or delegate the performance of any obligation under this Agreement by assignment, subcontracting, or any other means without the City Council's written consent, evidenced by the passage of an ordinance. As a condition of such written consent, if the City Council grants such written consent, the Consultant shall remain liable for completing the work in the event of default by a successor consultant, assignee, transferee, or Sub-consultant.

- E. Any attempt to sell, convey, assign, transfer, or pledge this Agreement shall be void *ab initio* and not confer any rights upon any third party without the City Council's written consent. If the Consultant fails to comply with this Section or otherwise disposes of all or any part of its rights, title, or interest in this Agreement, the City may cancel this Agreement at its sole option. In addition, all the Consultant's rights, title, and interest shall terminate according to Article IX Termination, notwithstanding any other remedy available to the City under this Agreement. If the Consultant violates this provision, such violation shall not release the Consultant from any obligation under the terms and conditions of this Agreement. In addition, such violation shall not relieve the Consultant from the payment of damages due to the City because of such violation.

XIV. INDEPENDENT CONTRACTOR

- A. The Consultant covenants and agrees to the following:
1. The Consultant is an independent contractor and not an agent, servant, employee, or officer of the City.
 2. The Consultant shall have the exclusive right to control the details of the work and all persons performing such work. The Consultant shall also be responsible for the acts and omissions of its agents, employees, officers, sub-consultants, and subcontractors.
 3. The doctrine *respondeat superior* shall not apply to the relationships between the Parties and the City and Consultant's agents, employees, officers, consultants, sub-consultants, or subcontractors.
 4. Under this Agreement, nothing shall be construed to create the relationship of principal-agent, employer-employee, partners, or joint venturers between the Parties. The Parties understand and agree that the City shall not be liable for any claims by any third party in connection with the work and that the Consultant shall not have any authority to bind the City.

XV. INTEREST PROHIBITED IN THE CITY'S CONTRACTS

- A. The City's officers and employees shall not have a financial interest, directly or indirectly, in any contract with the City or be financially interested, directly or indirectly, in the sale of any land, materials, supplies, or services to the City except on behalf of the City as an officer or employee. This prohibition extends to the City's Public Service Board, SAWS, and more than purely advisory boards and commissions. This prohibition also applies to subcontracts on the City's projects.

- B. The Consultant acknowledges that it is informed that the City's Charter and its Ethics Code prohibit an officer or employee of the City from being financially interested in any contract with the City or any agency of the City, such as a City-owned utility. Such officer or employee has a "prohibited financial interest" in a contract with the City or in the sale of land, materials, supplies, or services to the City if the following individuals or entities are parties to the contract or sale: such officer or employee; such officer's or employee's parent, child, or spouse; a business entity in which such officer or employee or such officer's or employee's parent, child, or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity or ten percent (10%) or more of the fair market value of the business entity; or a business entity in which any individual or entity listed is a sub-consultant or subcontractor on a contract with the City or a partner or parent of a subsidiary business entity.
- C. The Consultant warrants and certifies, and the Parties execute this Agreement in reliance on such warranty and certification, that it and its agents, employees, and officers are neither officers nor employees of the City or any of the City's agencies, such as City-owned utilities.

XVI. AMENDMENTS

Except where this Agreement's terms and conditions expressly provide otherwise, the Parties shall execute a written amendment for any alteration to, addition to, or deletion from the terms and conditions of this Agreement. The Director shall have the authority to approve and execute an amendment that extends the term of this Agreement or causes this Agreement's total cost to be more than twenty-five thousand dollars and zero cents (\$25,000.00) but less than fifty thousand dollars and one cent (\$50,000.01). However, the City Council shall have the exclusive authority to approve an amendment increasing this Agreement's total cost to more than fifty thousand dollars and zero cents (\$50,000.00).

XVII. CLAIMS

- A. A Party shall file a Claim with notice to the other Party via *PRIMELink*. If the Consultant files a claim, the Consultant's authorized corporate officer or official (if the Consultant is not a corporation and the official has the authority to bind the Consultant as evidenced by a signature) shall swear to the Claim to verify its truth and accuracy. The filing Party shall be responsible for substantiating its Claim(s).
- B. Either Party shall initiate a Claim via *PRIMELink* and send it to the other Party within twenty-one (21) days after the event giving rise to the Claim.
- C. Pending a Claim's final resolution, except as otherwise agreed to in writing, the Consultant shall continue to perform under a Task Order and this Agreement. Likewise, the City shall continue to make payments to the Consultant under this Agreement.

- D. If the Consultant desires to file a Claim for an increase in the time for performance, it shall notify the City via *PRIMELink* per this Article. The Claim shall include an estimate of the probable effect of a delay on the work's progress. In the case of a continuing delay, one (1) Claim will suffice.
- E. Except as otherwise provided in this Agreement, the following standards to calculate a Claim's amount or the damages for breach of contract (such provision surviving any termination after such breach) shall apply to Claims by either Party.
1. No consequential damages shall be approved.
 2. Damages are limited to the extra costs specifically shown to have been directly caused by a proven wrong for which a Party claims the other is responsible.
 3. No profit shall be approved on any Claim for damages.
 4. Under this Article, nothing shall be construed to waive the City's governmental immunity from a lawsuit. The City expressly retains its governmental immunity to the extent that state law does not clearly and unambiguously waive it.

F. ALTERNATIVE DISPUTE RESOLUTION

1. Unless performance would be impossible or impracticable, each Party shall continue to perform its obligations under this Agreement pending the final resolution of any matter arising from or relating to it.
2. Before invoking alternative dispute resolution or mediation under this Agreement, the Parties shall try to resolve any matter arising from or relating to this Agreement through discussions between their senior management representatives with overall managerial responsibility for similar projects. Such discussions shall be a condition precedent for any alternative dispute resolution or mediation. Suppose such senior management representatives cannot resolve a dispute within thirty (30) days after a Party delivers written notice of the dispute to the other. In that case, the Parties shall proceed to alternative dispute resolution or mediation. Under this Section, all negotiations are confidential and shall be regarded as compromise and settlement negotiations for the applicable rules of evidence.

G. MEDIATION

1. If either Party asserts that the other commits a material breach of this Agreement, the alleging Party shall request mediation as a condition precedent to filing a lawsuit.
2. A request for mediation shall be in writing and ask that mediation start not fewer than thirty (30) days but not more than ninety (90) days after the date of the request, except upon the Parties' written agreement.

3. Suppose the Parties cannot agree on a date for mediation or the identity of the mediator(s) within thirty (30) days after the date of the request for mediation. In that case, all conditions precedent shall be regarded as having occurred under this Article.
4. The Parties shall split the mediator's fee and any filing fees equally. The exclusive venue shall be San Antonio, Bexar County, Texas, for mediation or a lawsuit arising under this Agreement. In mediation, any agreement reached shall be enforceable as a settlement agreement in any court having jurisdiction in such venue. Under this Agreement, no provision shall waive any immunity or defense available to the Parties. Likewise, no provision shall be a consent to suit.
5. In the event of litigation, the Parties agree to waive their rights to the payment of attorney's fees that may otherwise be recoverable under the Texas Civil Practice and Remedies Code, Chapter 38; Texas Local Government Code, Section 271.153; the Prompt Payment Act; common law; or any other provision for the payment of attorney's fees.

XVIII. SEVERABILITY

Under this Agreement, if any clause or provision is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the Parties intend that this Agreement's remainder shall be left undisturbed and that, in place of each clause or provision declared illegal, invalid, or unenforceable, this Agreement shall substitute a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision and as possible, legal, valid, and enforceable.

XIX. LICENSES/CERTIFICATIONS

The Consultant warrants and certifies that it and any other person designated to provide the work (1) have the requisite training, license, or certification to provide them and (2) meet all standards for competence according to all other authoritative bodies.

XX. COMPLIANCE

- A. The Consultant shall provide and perform all the work in compliance with all applicable federal, state, and local laws, rules, and regulations.
- B. Nondiscrimination. The Consultant understands the City's nondiscrimination policies found in Article X of Chapter 2 of the City Code and agrees to comply with such nondiscrimination policies. The Consultant shall not discriminate based on race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability unless exempt by federal or state law or authorized under the terms and conditions of this Agreement.

- C. Equal Employment Opportunity/Anti-Harassment. It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of **employment discrimination, harassment, and sexual harassment, including but not limited to gender identity and gender expression harassment**. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior but may not legally constitute **employment discrimination, harassment, sexual harassment, or gender harassment** is prohibited. Any act in violation of Title VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes is prohibited. Retaliation against employees for opposing alleged **employment discrimination, harassment, sexual harassment, or gender harassment** or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited.

XXI. NONWAIVER OF PERFORMANCE

Unless otherwise explicitly provided for in this Agreement, if either Party waives a breach of any of this Agreement's terms, conditions, covenants, or guarantees, such waiver shall be neither construed as nor held to be a waiver of any preceding or succeeding breach of the same or any other term, condition, covenant, or guarantee under this Agreement. In addition, if either Party fails to insist in any one or more cases upon the strict performance of any covenant under this Agreement or to exercise any option under this Agreement, such failure shall be neither construed as nor held to be a waiver or relinquishment of such covenant or option in the future. In all cases, if either Party waives, changes, modifies, or discharges any provision of this Agreement, then such waiver, change, modification, or discharge shall be neither valid nor effective unless expressed in writing and signed by the Party to be charged. In addition, concerning the City, the Director must approve such waiver, change, modification, or discharge according to Article XVI Amendments. Neither a Party's act nor omission shall impair or prejudice any right, power, privilege, or remedy available to that Party under this Agreement, at law or in equity, where such rights, powers, privileges, or remedies are always to be preserved explicitly because of this Agreement.

XXII. APPLICABLE LAW AND LEGAL FEES

- A. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND BY THE LAWS OF THE STATE OF TEXAS, AND THE PARTIES' OBLIGATIONS SHALL BE PERFORMABLE IN SAN ANTONIO, BEXAR COUNTY, TEXAS.
- B. If legal action, such as civil litigation, is necessary in connection with the Parties' obligations, the exclusive venue shall lie in San Antonio, Bexar County, Texas.
- C. The Parties agree that each waives its right to attorneys' fees in the event of litigation.

XXIII. LEGAL AUTHORITY

By signing this Agreement for the Consultant, the signer represents, warrants, assures, and guarantees that they have the full legal authority to execute it and bind the Consultant to all terms, conditions, provisions, and obligations.

XXIV. PARTIES BOUND

This Agreement shall bind and benefit the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as otherwise expressly provided for in this Agreement.

XXV. CAPTIONS

The captions are for convenience and reference only. They do not limit or enlarge the terms and conditions of this Agreement.

XXVI. INCORPORATION OF EXHIBITS

Each exhibit listed is essential to this Agreement, which governs the Parties' rights and obligations. Each shall be construed according to its order of appearance. This Agreement takes priority over all exhibits.

EXHIBIT 1: SCOPE OF SERVICES

EXHIBIT 2: HOURLY RATES

EXHIBIT 3: HEAT ILLNESS PREVENTION ORDINANCE (ORDINANCE 2023-08-31-0585)

EXHIBIT 4: SOLID WASTE DISPOSAL ACT

XXVII. COMPLIANCE WITH THE TEXAS GOVERNMENT CODE CHAPTERS 2252, 2270, 2271, AND 2274

The Consultant agrees to comply with the applicable restrictions from the Texas Government Code Chapters 2252, 2270, and 2271. Such limitations prohibit the City from contracting with a company engaging in business with Iran, Sudan, or a designated Foreign Terrorist Organization; boycotting Israel; boycotting firearm entities or firearm trade associations; or boycotting energy companies. By signing this Agreement, the Consultant verifies that it reviewed such restrictions and warranties compliance with the requirements for certification from the Texas Government Code Sections 2270.002 and 2274.002 if applicable. The City relies on such verification. If such verification proves false, the City may terminate this Agreement for material breach.

XXVIII. ENTIRE AGREEMENT

This Agreement, including its exhibit, constitutes the entire and final agreement between the Parties and contains all terms and conditions agreed by the Parties. No other agreements, oral or otherwise, shall be valid or binding on the Parties concerning the subject matter of this Agreement unless such contracts are written, dated after this Agreement, and duly executed by the Parties according to Article XVI Amendments.

CONTINUED ON THE NEXT PAGE

XXIX. SIGNATURES

EXECUTED and **AGREED** to be effective on the 2 day of October , 2024.

City of San Antonio

Consultant

Catherine Hernandez
Director
Transportation Department

Francis G Wearden

Francis Wearden
Chief Executive Officer
FPO

Approved as to form:

Assistant City Attorney

XXX. EXHIBIT 1: SCOPE OF SERVICES

004 - SCOPE OF SERVICE

No work shall be undertaken, and no expenditure made unless the concept and program have been approved in writing by the City. Upon request from the City, selected respondent will provide the City with a proposal for specific projects. Any and all work performed shall be pursuant to working in accordance with City process and signed by both parties.

The Scope of Service does not guarantee work will be assigned and is to be used as a general guide; it is not intended to be a complete list of all necessary work, nor are the services exclusive to the selected consultant.

At all times the consultant(s) will provide expert guidance and technical skills to the City for delivery of safe and successful projects that comply with the City's communication and engagement policies, procedures, and best practices.

All services and activities must be performed in accordance with the City's applicable policies and Administrative Directives, including but not limited to, the City's Social Media Administrative Directive, Communications Policy, Data Governance Administrative Directive, Data Security Administrative Directive, Public Participation Administrative Directive, and Diversity, Equity, & Inclusion standards.

The scope of services may include but shall not be limited to:

A. MARKETING COMMUNICATIONS SERVICES

Marketing, strategic communications and public relations activities may include, but are not limited to:

1. Any activity associated with advertising, marketing, public relations, digital strategy, and social media, such as:
 - a. Strategic planning
 - b. Conduct SWOT analysis focused on marketing efforts, including supporting tasks such as marketing research, focus groups, data mining, etc.
 - c. Developing campaigns and content
 - d. Designing, producing, hosting, and maintaining web and other digital media
 - e. Graphic design & production
 - f. Planning media strategies across traditional, Out-of-Home (OOH), programmatic, social, streaming, and other relevant channels, along with tasks such as purchasing and tracking
 - g. Event planning, including associated tasks such as venue selection, catering, event décor, audio-visual services, entertainment, giveaways, signage, and invitation design and production
 - h. Photography and video production, including stock and original imagery
 - i. Media relations support such as pitching, booking and speaker prep to diverse local, national and industry audiences
 - j. Content development including social media posts, influencer coordination, online profiles, advertorials, and related channels
 - k. Opt-in database and related communication channel management including services sourcing, procurement, and coordination with City Information Technology Services Department to ensure security and protocol compliance
 - l. Translation of content for publication or broadcast into Spanish and/or other language as requested.

2. Assist in positioning City and its programs as a preferred brand and a key economic driver for our region's transportation needs.
3. Support community and stakeholder engagement efforts.
 - a. Comprehensive services in planning, scheduling, coordinating, conducting, documenting, and exhibit preparation for public engagement activities involving improvement projects. These public engagement activities include but are not limited to meetings with affected property owners, public meetings, public hearings, and stakeholder meetings.
 - b. Developing media packets, maintaining public contact lists, public comment inventories, and associated summary reports.
 - c. The consultant should provide an overview of their proposed Communications & Engagement Strategy for the project, and how they will integrate equity into the engagement and document meetings, events, and activities to prepare the City to compete for federal grant opportunities and represent the equity goals of the City. All public engagement activities on behalf of the City of San Antonio must also comply with the City's Public Participation & Engagement [Administrative Directive 10.1](#).
 - d. The Communications & Engagement Strategy developed by the Consultant should ensure equitable access catering specifically to minority, low-income populations, transit-dependent populations, disability and others facing transportation disadvantages utilizing the City's Equity Atlas and other data sets applicable to these communities.
 - e. The consultant will also determine the appropriate level and type of engagement needed to capture the feedback and insight of residents, businesses, and visitors, alike.
 - f. Consultant shall communicate with stakeholders that meet National Environmental Policy Act (NEPA) and Section 106 and the National Historic Preservation Act (NHPA) "consultation" requirements, as necessary, to ensure the documentation of community engagement to support the City's future applications for competitive, discretionary grants under the Infrastructure Investment and Jobs Act (IIJA).
 - g. All communications, marketing, design and social media activities must comply with the City's Communications Policy and Brand Guidelines. The City's Communications & Engagement Department must approve any use of the City's logo.
 - h. All communications, content, and materials created as part of this solicitation and subsequent agreement, must meet or exceed City accessibility requirements further described in Section I below.
4. Develop, manage, and assist in the procurement of marketing and advertising for the promotion of City programs, new projects, and project improvements.
5. Create and execute public surveys, in accordance with the City's Public Participation & Engagement [Administrative Directive \(AD 10.1\)](#).
6. Production and editing of video shorts, commercials, training videos, media ad buys and other video/audio services. Videos may air on the TVSA Government Channel.
7. Evaluate goals, objectives, and plans, provide recommendations on how to effectively communicate Vision Zero SA, Bike Network Plan, and other programs' missions and strategic goals in a timely and efficient manner.
8. Provide best-practice examples and pioneering suggestions on ways to improve campaign integration, messaging, brand positioning, and reach through channel and content marketing analysis.

9. Develop and evaluate new marketing programs to promote programs and other targeted campaigns, as needed.
10. Identify opportunities for partnership and promotion to leverage and extend the brand reach to target markets.
11. Conduct market research
12. Develop and refine key performance indicators (KPIs) and analytics.
13. Assist in the evaluation of marketing communications technologies, channels, and support systems.
14. Ensure marketing communications reaches the highest level of accessibility through multilingual and multicultural content, universal design, and Americans with Disability Act (ADA) compliance.
15. Prioritize diversity throughout the program to create inclusive programming and communications.
16. In coordination with the City Transportation and Finance departments, and in accordance with the City's purchasing policies, procure sales promotions and collateral items, including but not limited to product bundles, free trials, promotional products, coupons, vouchers, gift cards, t-shirts and/or other designated supplies and equipment for proposed events, competitions, charitable events or special programs.

B. PROGRAM / PROJECT MARKETING CAMPAIGNS

All program / project marketing campaign services should consider integrating traditional, native, digital, streaming, OOH, programmatic, social, and other relevant channels as appropriate and may include, but are not limited to:

1. Develop and create marketing communications, including targeting marketing communications.
2. Create and produce innovative transportation campaigns. Any implemented campaigns will be tracked by selected Consultant.
3. Earned, owned, and paid elements
4. Trafficking and scheduling
5. Project-specific promotional messaging; experiential marketing (including video simulations, virtual reality tools for public engagement efforts related to conceptual design concepts for corridor studies and other programs in the Transportation Department); and general awareness marketing support.
6. Consumer marketing campaigns targeting San Antonio residents.
7. Develop consumer marketing campaigns on an as needed basis.
8. Support may include events, activities, contests, graphic design, photography, videography, data, ad placement, messaging, or other channels as appropriate.

9. Participate in monthly or quarterly meetings. With department project manager or project team
10. Development of marketing materials and products to enhance the programs' visibility.

C. SOCIAL MEDIA

Social media plan tasks, include but are not limited to:

1. Scheduling, content planning, content optimization, growing and engaging the fan base, running contests, measuring results, campaign development and tracking.
2. Providing paid social media support through boosting and social media advertising
3. Assist with the evaluation and implementation of social media tools to track campaigns, engagement, conduct competitive research, and engage City employees and leadership to share content.
4. Assist with content creation, scheduling, posting, and tracking.
5. Recommend ways to optimize owned, earned, and paid content.

D. MEDIA PLACEMENT

1. Plan and place paid targeted, trackable campaigns across relevant media channels.

E. PUBLIC RELATIONS

Public Relations Services may include, but are not limited to the following areas:

1. Assist staff in developing strategies and implementation plans with a focus on its Vision Zero SA and Bike Network Plan projects, SS4A Grant Award for Zarzamora Street Midblock Crossings and ten (10) HIN Safety Campaigns, and other programs as needed.
2. Formulate key messages and talking points; write and produce media packets including press releases, fact sheets, flyers, invitations, booklets, presentations, etc. in accordance with City Brand Guidelines.
3. Provide materials in English and Spanish.
4. Assist in pitching stories to media in both English and Spanish as appropriate for the audience.
5. Assist staff with developing strategies and implementation plans for communications functions.
6. Develop and implement community engagement programs such as contests, partner/sponsor event opportunities, exhibits, event attendance, or related happenings to specific audiences such as stakeholders and consumers.

F. PUBLIC OUTREACH & ENGAGEMENT FOR PROJECT-SPECIFIC IMPROVEMENTS:

1. Comprehensive services in planning, scheduling, coordinating, conducting, documenting, and exhibit preparation for public engagement activities involving improvement projects. These

public engagement activities include but are not limited to meetings with affected property owners, public meetings, public hearings, and stakeholder meetings.

2. Developing media packets, maintaining public contact lists, public comment inventories, and associated summary reports.
3. The consultant should provide an overview of their proposed Communications & Engagement Strategy for the project, and how they will integrate equity into the engagement and document meetings, events, and activities to prepare the City to compete for federal grant opportunities and represent the equity goals of the City. All public engagement activities on behalf of the City of San Antonio must also comply with the City's [Public Participation Administrative Directive 10.1](#).
4. The Communications & Engagement Strategy developed by the Consultant should ensure equitable access catering specifically to minority, low-income populations, transit-dependent populations, disability and others facing transportation disadvantages utilizing the City's [Equity Atlas](#) and other data sets applicable to these communities.
5. The consultant will also determine the appropriate level and type of engagement needed to capture the feedback and insight of residents, businesses, and visitors, alike.
6. Consultant shall communicate with stakeholders that meet [National Environmental Policy Act \(NEPA\) and Section 106 and the National Historic Preservation Act \(NHPA\)](#) "consultation" requirements, as necessary, to ensure the documentation of community engagement to support the City's future applications for competitive, discretionary grants under the [Infrastructure Investment and Jobs Act \(IIJA\)](#).
7. All communications, marketing, design and social media activities must comply with the City's Communications [Policy and Brand Guidelines](#). The City's Communications & Engagement Department must approve any use of the City's logo.
8. All communications, content, and materials created as part of this solicitation and subsequent agreement, must meet or exceed City accessibility requirements.

G. EVENT SERVICES

The selected firm may be tasked with supporting a variety of events, sponsored events, new services, openings and unveilings of projects and improvements, awards and recognition, and other events. Event service may include but not be limited to the following areas:

1. Concept and event plan development
2. Production and show management
3. Promotion of events
4. Attendee list development, invitation production and distribution
5. Decor, entertainment, catering, equipment rentals, lighting, AV, and other supporting resources
6. Production and procurement of novelties/gifts

7. Assist in the solicitation of future hosting opportunities through bid preparation, presentation development, and site visit support

H. MISCELLANEOUS SERVICES

As requested, the selected consultant may provide the City, on an on-call basis, graphic design, print production and media buys for general marketing, as well as video photography, production and editing services. The selected consultant may be asked to develop branding for a special TD project along with print production. In the past, video services have included training videos, TV ads, and digital messaging videos.

1. Subcontracting: The City encourages consultants to consider services which may be subcontracted such as fieldwork for print production, photographers, videographers, video production companies and market research companies, among others.

I. ACCESSIBILITY

Vendors/Consultants who develop and/or modify City of San Antonio (City) digital assets and channels must meet a fundamental requirement that all information and communications technology (ICT) is accessible to, and usable by, people with disabilities. This meets the City's obligations under the Americans with Disabilities Act (ADA) of 1990 (as amended 2008) and the Rehabilitation Act of 1973 and other related laws. Under these legislations, the City must provide employees and members of the public with disabilities comparable access to ICT as people who do not have disabilities.

Vendors/Consultants must adhere to or exceed the following standards for ICT: Section 508 Standards and Web Content Accessibility Guidelines (WCAG) 2.1 Level AA. Applicable standards will be determined by the Scope of Work (SOW) for each project and additional standards may be required based on the type of digital asset or channel. These standards are established as minimum requirements and Vendors are expected to deliver access at higher levels when technically feasible.

REFERENCES/RESOURCES:

The following plans and initiatives may provide additional information on the City of San Antonio and should inform the work carried out in the scope of work:

1. [SA Tomorrow Comprehensive Plan](#)
2. [SA Tomorrow Sustainability Plan](#)
3. [SA Tomorrow Multi-Modal Plan](#)
4. [2012 Bond Plans & Projects](#)
5. [2017 Bond Plans & Projects](#)
6. [2022 Bond Plans & Projects](#)
7. [National Association of City Transportation Officials \(NACTO\)](#)
8. [Federal Highway Administration \(FHWA\)](#)
9. [Federal Transit Administration \(FTA\)](#)
10. [US Department of Housing and Urban Development](#)
11. [American Association of State Highway & Transportation Officials \(AASHTO\) Guide for the Development of Bicycle Facilities](#)

12. [Texas Department of Transportation \(TxDOT\)](#)
13. [San Antonio Public Works Department](#)
14. [San Antonio Strategic Housing Implementation Plan \(SHIP\)](#)
15. [Public Works Department Streets Infrastructure Maintenance Program \(IMP\) and Transportation Department Bicycle Infrastructure Maintenance Program \(IMP\)](#)
16. [Smart Growth America -Complete Streets of America](#)
17. [Manual of Uniform Traffic Control Devices \(MUTCD\) - Texas](#)
18. [Manual on Uniform Traffic Control Devices for Streets & Highways](#)
19. [Transportation Research Board \(TRB\)](#)
20. [Bipartisan Infrastructure Law](#)
21. [Environmental Protection Agency](#)
22. [Unified Development Code \(UDC\)](#)
23. [Vision Zero SA](#)
24. [Safe Streets and Roads for All \(SS4A\) Grant Program](#)

XXXI. EXHIBIT 2: HOURLY RATES



Price Schedule

| TITLE | NAME | PRIME OR SUBCONTRACTOR | HOURLY RATE |
|-------------------------------|-------------------------------------|------------------------|-------------|
| Account Manager | Chris Bodmann | Prime | \$150 |
| Creative Director | Marcos Hernandez | Prime | \$175 |
| Copywriter | Adriana Ramos | Prime | \$125 |
| Graphic Designer | Zeke Saucedo | Prime | \$125 |
| Media Planner | Sarah Figueroa, Meenakshi Gautam | Subcontractor | \$155 |
| Media Buyer | Yolanda Gonzales & Team | Subcontractor | \$150 |
| Radio/Broadcast Production | Rebecca Guerra | Prime | \$125 |
| Video Production | Karla Valenzuela | Prime | \$125 |
| Video Editor | Joel Hernandez | Prime | \$125 |
| Videographer | Joel Hernandez | Prime | \$125 |
| Data Analyst | Marisa Parker | Prime | \$160 |
| Public Relations | Bianca Peralta | Subcontractor | \$150 |
| Strategic Communications | Mario Ochoa | Subcontractor | \$175 |
| Research | Marisa Parker | Prime | \$160 |
| Event Planner | Tanya Sammis | Subcontractor | \$140 |

XXXII. EXHIBIT 3: HEAT ILLNESS PREVENTION ORDINANCE (ORDINANCE 2023-08-31-0585)

Effective August 31, 2023, the Heat Illness Prevention Ordinance (the Ordinance) implements requirements for specific City-funded contracts involving activities in outdoor and unconditioned (I.e., without air conditioning) spaces.

Under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, the Consultant, as an employer, must provide its employees with a place of employment that “is free from recognized hazards that are causing or likely to cause death or serious harm to employees,” including heat-related hazards that are likely to cause death or serious bodily harm.

The City Council approved the Ordinance to guide contractors on the impact of severe heat throughout San Antonio, protecting the City’s residents and contractors’ employees from working under such conditions. The Ordinance provides the following requirements:

- A. When the heat index in San Antonio, Texas, equals or exceeds 95 degrees Fahrenheit, the Consultant is required to take the following actions for all onsite workers working in outdoor or unconditioned spaces:
 - 1. Mandate a minimum fifteen-minute (15-minute) rest break for every four (4) hours worked. No employee may be required to work more than 3.75 continuous hours without a rest break. These rest breaks are in addition to and shall not replace other required or otherwise provided rest breaks.
 - 2. Provide a heat-relief station with water and a shaded area at the work site.
 - 3. Train supervisors and workers to recognize heat-related hazards and take appropriate action.
 - 4. Post signage with the City’s requirements in English and Spanish throughout the worksite where notices are customarily posted for employees. The City shall determine the signs’ content, location, and size within the applicable design guidance manuals.

When executing this Agreement, the Consultant verifies that it will comply with the ordinance throughout the term and extensions of this Agreement. The City relies on the Consultant’s verification. If such verification proves false, the City may terminate this Agreement for material breach.

XXXIII. EXHIBIT 4: SOLID WASTE DISPOSAL ACT

Procurement Of Recovered Materials

The Consultant, its Sub-consultants, and subcontractors shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247 and Executive Order 12873 as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.