

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSULTING AND ACTUARIAL REVIEW SERVICES FOR SELF-FUNDED
WORKERS' COMPENSATION AND LIABILITY**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement (the "Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("CITY") acting by and through its Chief Financial Officer ("CFO") or said CFO's designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2023 and **Madison Consulting Group, Inc.**, by and through its Vice President/Secretary ("CONSULTANT"). CITY and CONSULTANT may be referred to herein collectively as the "Parties".

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

**ARTICLE 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 "City Council" is the City of San Antonio City Council.
- 1.3 "CONSULTANT" is defined in the preamble of this Agreement and includes its successors.
- 1.4 "Director" shall mean the CITY's Finance Department Director / Deputy Chief Financial Officer (Deputy CFO) or designee, unless otherwise specified.

- 1.5 “Local Government Record” as used herein shall mean 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.

ARTICLE II

TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall begin upon the effective date of the ordinance awarding the contract for Fiscal Year 2023. The contract shall terminate after completion of services for Fiscal Year 2027. CONSULTANT shall provide actuarial reserve reports for each of the years within the term for the Self-Insurance Program report anticipated to be delivered within the first quarter of the subsequent year.
- 2.2 Renewals. The City shall have the option to renew under the same terms and conditions for up to two (2) additional one (1) year extensions. The City Manager, or designee, or the Deputy Chief Financial Officer shall have the authority to execute renewals on behalf of the City without further City Council action. An election by CITY not to renew the Contract shall require no action or notification by the CITY to CONSULTANT.
- 2.3 If funding for the entire Contract is not appropriated at the time this Contract is entered into, CITY retains the right to terminate this Contract at the expiration of each of CITY’s budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

ARTICLE III

SCOPE OF SERVICES

- 3.1 CONSULTANT agrees to provide the services described in this Article III entitled Scope of Services in exchange for the fees described in Article IV. Fees and Payment Terms.
- 3.2 The actuarial analysis shall be conducted by a licensed Independent Consulting Actuary who is a member of the Casualty Actuarial Society.

SELF-INSURANCE PROGRAMS:

- 3.3 CONSULTANT shall commence the actuarial analysis for the CITY’s self-insured workers’ compensation and liability programs, for the first year of the contract, during the

month of December 2023, provide the CITY with draft copies by ~~the first~~the first week of January 2024, and provide separate final reports for workers' compensation, general liability and automobile liability by the end of January 2024. CONSULTANT shall present the initial January draft report to CITY staff. The timeline for subsequent years entails commencing work during the month of October, with draft copies to the CITY by the third week of November, and final reports by the second week of December of the same year.

- 3.4 CONSULTANT shall provide an estimate of the unpaid loss and allocated loss adjustment expense (ALAE) for CITY's workers' compensation, general liability, and auto liability programs. This estimate will include a provision for known claims as of September 30 for each year of the contract, as well as claims which have been incurred but not yet reported (IBNR) to CITY.
- 3.5 Estimates shall be provided at expected 75%, and 90% probability, undiscounted, and at 1%, 2%, 3%, and 4% discounts, separated for auto liability, general liability, and workers' compensation, at specified retention levels for workers' compensation and general liability, and assuming no excess coverage for auto liability. Tables shall reflect these options for both Net Loss & ALAE Reserves and Net Loss & ALAE Funding.
- 3.6 CONSULTANT shall provide a "roll-forward" of its estimates to December 31 for each year of the contract.
- 3.7 CONSULTANT shall provide prospective year loss projections for workers' compensation, general liability, and auto liability coverage. The prospective period shall be from October 1 of the current year through September 30, of the following year.
- 3.8 CONSULTANT shall attend, at a minimum, quarterly meetings with the City's Finance Department, Office of Risk Management, City Attorney's Office, and City Manager's Office throughout each year of the contract. The purpose of these meetings is to jointly review claim reserves, assumptions and anomalies with the goal of providing additional context in the development of the CITY's year-end actuarial analysis. Total travel costs for these meetings are included in the total all-inclusive maximum price on Article IV. Fees and Payment Terms.
- 3.9 CONSULTANT is responsible for all costs associated with the printing and postage to the City for any reports and other deliverables.
- 3.11 CONSULTANT shall present their annual report and ~~walk-through~~walk-through assumptions and calculations used to develop the estimated reserves to CITY management staff.

ARTICLE IV

FEES AND PAYMENT TERMS

- 4.1 In consideration of CONSULTANT's performance in a satisfactory and efficient manner,

as determined solely by Director, of all services and activities set forth in this Agreement, CITY agrees to pay CONSULTANT an amount not to exceed \$69,000.00 as total compensation, to be paid to CONSULTANT as follows:

- 4.1.1 City shall pay \$7,000.00 upon completion of services, meetings, and provision of Fiscal Year 2023 Actuarial Report (Year 1).
- 4.1.2 City shall pay \$10,000.00 upon completion of services, meetings, and provision of Fiscal Year 2024 Actuarial Report (Year 2).
- 4.1.3 City shall pay \$10,000.00 upon completion of services, meetings, and provision of Fiscal Year 2025 Actuarial Report (Year 3).
- 4.1.4 City shall pay \$10,000.00 upon completion of services, meetings, and provision of Fiscal Year 2026 Actuarial Report (Year 4).
- 4.1.5 City shall pay \$10,000.00 upon completion of services, meetings, and provision of Fiscal Year 2027 Actuarial Report (Year 5).
- 4.1.6 If Contract is renewed, City shall pay \$11,000.00 upon completion of services, meetings, and provision of Fiscal Year 2028 Actuarial Report (Year 6).
- 4.1.7 If Contract is renewed, City shall pay \$11,000.00 upon completion of services, meetings, and provision of Fiscal Year 2029 Actuarial Report (Year 7).
- 4.2 CONSULTANT shall submit invoices to CITY upon completion of services and provision of final reports to City, in a form acceptable to CITY, which CITY shall pay within 30 days of receipt and approval by Director. 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, Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Alternatively, invoices can be submitted electronically to accounts.payable@sanantonio.gov with a copy to melanie.s.keeton@sanantonio.gov.
- 4.3 No additional fees or expenses of CONSULTANT shall be charged by CONSULTANT nor be payable by CITY. The parties hereby 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 cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.

- 4.4 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.

ARTICLE V

OWNERSHIP OF DOCUMENTS

- 5.1 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 CITY pursuant to this Agreement shall be the subject of any copyright or proprietary claim by CONSULTANT.
- 5.2 CONSULTANT acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of CITY. CONSULTANT will turn over to CITY all such records. CONSULTANT shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without CITY's written permission, unless required to do so by a Court of competent jurisdiction.
- 5.3 In accordance herewith, CONSULTANT agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

ARTICLE 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 hereunder (hereafter referred to as "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 hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 6.2 CONSULTANT shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. CONSULTANT

acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. CITY may, at its election, require CONSULTANT to return the documents to CITY at CONSULTANT's expense prior to or at the conclusion of the retention period. In such event, CONSULTANT may retain a copy of the documents at its sole cost and 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 herein. CONSULTANT understands and agrees that CITY will process and handle all such requests.
- 6.4 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY in a given fiscal year, CONSULTANT acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the CITY or sent between the CITY and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. CONSULTANT agrees that the contract can be terminated if CONSULTANT knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.5 CONSULTANT warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. CITY hereby relies on CONSULTANT's certification, and if found to be false, CITY may terminate this Agreement for material breach.

ARTICLE 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 hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by CITY without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 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 (1) 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 XI. Assignment and Subcontracting;
- 7.3.2 Neglect or failure by CONSULTANT to perform or observe any of the terms,

- conditions, covenants or guarantees of this Contract or of any amendment between CITY and CONSULTANT;
- 7.3.3 Failure by CONSULTANT to correct any deficiency therein within the time allotted, as specified in a written notice from CITY to CONSULTANT sent pursuant to Article VIII, Notice; or
- 7.3.4 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 30-day cure period, CITY shall have the right, without further notice, to terminate this Agreement in whole or in part as CITY deems appropriate, and to contract with another contractor 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 contractor 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 Failure to comply with the terms and conditions stated in Article XIII. SBEDA;
- 7.4.2 Bankruptcy or selling substantially all of company's assets;
- 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
- 7.4.4 Performing unsatisfactorily.
- 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 herein, 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 effect 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 thirty (30) calendar days of a written request by CITY and shall be completed at CONSULTANT's sole cost and expense. Payment of compensation due or to become due to CONSULTANT is conditioned upon delivery of all such documents, if requested by CITY.
- 7.7 Within forty-five (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 forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by CONSULTANT of any and all right or claims to collect moneys that

CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

- 7.8 Upon the effective date of expiration or termination of this Agreement, CONSULTANT shall cease all operations of work being performed by CONSULTANT or any of its subcontractors pursuant to this Agreement.
- 7.9 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.

ARTICLE VIII

NOTICE

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 three (3) 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
Attn: Troy Elliott, Deputy Chief Financial Officer
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Madison Consulting Group, Inc.
200 N. Second Street
Madison, GA 30650

With Copy to:

City of San Antonio
Attn: Melanie Keeton, Assistant Finance Director
P.O. Box 839966
San Antonio, Texas 78283-3966

ARTICLE IX

INSURANCE

- 9.1 No later than 30 days before providing services under this Agreement, CONSULTANT must provide a completed Certificate(s) of Insurance to CITY's Finance Department. The certificate must be:

- 9.1.1 clearly labeled with the legal name of the event in the Description of Operations block;
- 9.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and
- 9.1.3 properly endorsed and have the agent's signature, and phone number.
- 9.2 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 Finance Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 9.3 If the CITY does not receive copies of insurance endorsement, then by executing this Agreement, CONSULTANT certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.
- 9.4 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.
- 9.5 CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, at CONSULTANT'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the CONSULTANT claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
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	For Bodily Injury and Property Damage \$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.
*6. Cyber Liability	\$500,000 per claim \$500,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
*If Applicable	

- 9.6 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.
- 9.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the CITY, to receive copies of the policies, declaration page and all endorsements. CONSULTANT must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 9.7 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 advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days

advance notice for nonpayment of premium.

- 9.8 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.
- 9.9 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.
- 9.10 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.
- 9.11 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.
- 9.12 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.
- 9.13 CONSULTANT and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE X

INDEMNIFICATION

- 10.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. 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. In addition, CONSULTANT agrees to indemnify, defend, and hold the CITY harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.
- 10.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

ARTICLE XI

ASSIGNMENT AND SUBCONTRACTING

- 11.1 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.

- 11.2 It is CITY's understanding and this Agreement is made in reliance thereon, that CONSULTANT intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director in writing.
- 11.3 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. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director.
- 11.4 Except as otherwise stated herein, CONSULTANT may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the 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 CONSULTANT, assignee, transferee or subcontractor.
- 11.5 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.

ARTICLE XII

INDEPENDENT CONTRACTOR

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 “respondeat superior” shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between CITY and CONSULTANT. The parties hereto understand and agree that 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.

ARTICLE XIII

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

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

ARTICLE XIV

AMENDMENTS

- 14.1 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. Director shall have authority to execute amendments on behalf of the CITY without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the CITY.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

ARTICLE XV **COMPLIANCE**

- 15.1 CONSULTANT shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 15.2 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.

ARTICLE XVI **INTELLECTUAL PROPERTY**

- 16.1 CONSULTANT shall pay all royalties and licensing fees necessary for performing its obligations under this Agreement. 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, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the CITY.
- 16.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, CONSULTANT will immediately:

Either:

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

16.3 CONSULTANT further agrees to:

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

Provided that:

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

ARTICLE XVII
NONWAIVER OF PERFORMANCE

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

ARTICLE XVIII
LICENSES/CERTIFICATIONS

CONSULTANT warrants and certifies that CONSULTANT and any other person designated to provide services hereunder (1) is and at all times during the term of this Agreement will be a member in good standing of the Casual Actuarial Society and (2) has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XIX
LAW APPLICABLE & LEGAL FEES

- 19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 19.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between CITY and CONSULTANT arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 19.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XX
LEGAL AUTHORITY

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 the terms, conditions, provisions and obligations herein contained.

ARTICLE XXI
PARTIES BOUND

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

ARTICLE XXII
CAPTIONS

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

ARTICLE XXIII
CONFIDENTIAL INFORMATION

- 23.1 CONSULTANT shall secure the confidentiality of records and information that CONSULTANT may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting CITY's or its authorized representatives' right of access to records or other information under this Contract.
- 23.2 No reports, information, project evaluation, project designs, data or other documentation developed by, given to, prepared by or assembled by CONSULTANT under this contract shall be disclosed or made available to any individual or organization by CONSULTANT without the prior written approval of the CITY.
- 23.3 If CONSULTANT receives inquiries regarding documents within its possession pursuant to this contract, CONSULTANT shall immediately forward such request to the CITY for disposition.

ARTICLE XXIV
SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid,

illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XXV

STATE PROHIBITIONS ON CONTRACTS

25.1 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.

25.2 "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.

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

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

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

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

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

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

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

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

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

ARTICLE XXVI

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

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. CONSULTANT hereby certifies that it is not identified on such a list and that it will notify CITY should it be placed on such a list while under contract with CITY. CITY hereby relies on CONSULTANT's certification. If found to be false,

or if CONSULTANT is identified on such list during the course of its contract with CITY, CITY may terminate this Agreement for material breach.

ARTICLE XXVII

CONFLICT OF INTEREST

- 27.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the CITY. An officer or employee has a “prohibited financial interest” in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a CITY officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a CITY contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 27.2 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 has tendered to the CITY a Contracts Disclosure Statement in compliance with the CITY’s Ethics Code.

ARTICLE XXVIII

EXECUTION IN COUNTERPART

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

ARTICLE XXIX

AUTOPEN OR ELECTRONIC SIGNATURE

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

ARTICLE XXX
INCORPORATION OF EXHIBITS

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

Exhibit A CITY's Request for Proposals (RFP) No. 23-124; RFx 6100017229, including any addendums, exhibits, and attachments

Exhibit B CONSULTANT's Proposal submitted in response to (RFP) No. 23-124; RFx 6100017229 dated August 25, 2023

ARTICLE XXXI
ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

**MADISON CONSULTING GROUP,
INC.**

(Signature)

Printed Name: _____

Title: _____

Date: _____

(Signature)

Printed Name: John Gleba

Title: Vice President / Secretary

Date: November 6, 2023

Approved as to Form:

Assistant City Attorney