

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
CIVIL ENGINEERING SERVICES**

**STATE OF TEXAS                    }**  
**COUNTY OF BEXAR                }**  
**CITY OF SAN ANTONIO          }**

This Professional Services Agreement for the Civil Engineering Services for the 2022-2027 General Obligation Bond Program (hereafter referred to as “this Agreement” or “the Agreement”) is made and entered into in San Antonio, Bexar County, Texas, between City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as “City”) and

**\_\_\_\_\_**  
**Name of Firm**  
**\_\_\_\_\_**  
**Address**  
**\_\_\_\_\_**  
**City, State & ZIP Code**  
**\_\_\_\_\_**

(“Consultant”), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for Civil Engineering Services for the 2022-2027 General Obligation Bond Program as set forth herein in connection with the above designated solicitation for City.

**INDEX**

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE NO.</u>
ARTICLE I.	DEFINITIONS .....	4
ARTICLE II.	COMPENSATION .....	6
ARTICLE III.	METHOD OF PAYMENT.....	7
ARTICLE IV.	SCOPE OF SERVICES.....	9
	[SUBJECT TO REVISION AS APPLICABLE] .....	9
ARTICLE V.	TIME AND PERIOD OF SERVICE .....	11
ARTICLE VI.	(RESERVED) .....	11
ARTICLE VII.	COORDINATION WITH THE CITY .....	11
ARTICLE VIII.	REVISIONS TO DOCUMENTS .....	12
ARTICLE IX.	OWNERSHIP OF DOCUMENTS .....	12
ARTICLE X.	TERMINATION AND/OR SUSPENSION OF SERVICES.....	14
ARTICLE XI.	CONSULTANT'S WARRANTY .....	17
ARTICLE XII.	NON-DISCRIMINATION POLICY .....	17
ARTICLE XIII.	ASSIGNMENT OR TRANSFER OF INTEREST.....	18
ARTICLE XIV.	INSURANCE REQUIREMENTS .....	18
ARTICLE XV.	INDEMNIFICATION .....	21
ARTICLE XVI.	CLAIMS AND DISPUTES.....	21
ARTICLE XVII.	SEVERABILITY .....	24
ARTICLE XVIII.	INTEREST IN CITY CONTRACTS PROHIBITED.....	24
ARTICLE XIX.	TEXAS GOVERNMENT CODE §2270.002.....	24
ARTICLE XX.	CONFLICTS OF INTEREST DISCLOSURE.....	26
ARTICLE XXI.	STANDARD OF CARE/LICENSING .....	26
ARTICLE XXII.	RIGHT OF REVIEW AND AUDIT OF CONSULTANT’S RECORDS .....	27
ARTICLE XXIII.	ENTIRE AGREEMENT .....	28
ARTICLE XXIV.	VENUE .....	28
ARTICLE XXV.	NOTICES.....	28
ARTICLE XXVI.	INDEPENDENT CONTRACTOR .....	28
ARTICLE XXVII.	CAPTIONS.....	29
ARTICLE XXVIII.	CONFLICT RESOLUTION BETWEEN DOCUMENTS .....	29
EXHIBIT A –	SCOPE OF SERVICES.....	30
EXHIBIT B –	PROJECT FEE SUMMARY .....	32

**EXHIBIT C – SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)  
PROGRAM CONTRACT PROVISIONS.....34**

**EXHIBIT D – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO.....36**

**EXHIBIT E – ADDENDA.....38**

## ARTICLE I. DEFINITIONS

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

- I.1** “**AGREEMENT**” is this written document signed by City and Consultant, including any other document itemized and expressly referenced in, or attached to, and expressly made part of this Agreement, to include Consultant’s proposal, to the extent accepted by City and not in conflict with the **ARTICLES** of this Agreement: Scope of Services – **EXHIBIT A**; Schedule of Project Services - **EXHIBIT B**; Additional Services - **EXHIBIT C**; SBEDA Subconsultant/Supplier Utilization Plan and SBEDA Ordinance Compliance and Provision - **EXHIBIT D**; General Conditions for City of San Antonio Construction Projects – **EXHIBIT E**; and any issued Addenda – **EXHIBIT F**.
- I.2** “**APPLICATION FOR COMPENSATION**” means written form for a request from Consultant to be paid for completed work.
- I.3** “**AMENDMENT**” is a written modification of the Contract prepared by City or Consultant and signed by City and Consultant (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Scope of Services or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.
- I.4** “**CCMS**” means City’s Contract Management System, whereby payments made by Consultants to Sub-Consultants, said payments confirmed by Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.
- I.5** “**CITY**” means City of San Antonio, Texas and its authorized representatives.
- I.6** “**CITY DESIGNATED REPRESENTATIVE**” means person designated by City to act for City.
- I.7** “**CLAIM**” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money and/or extension of time or other relief, with respect to the terms of this Agreement. The term “Claim” also includes other disputes and matters in question between City and Consultant arising out of, or relating to, this Agreement.
- I.8** “**COMPENSATION**” means amounts paid for services under this Agreement.
- I.9** “**CONSULTANT**” means \_\_\_\_\_ and its officers, partners, employees, agents and representatives, as well as all Sub-Consultants, if any, and all other persons or entities for which Consultant legally is responsible.
- I.7** “**DESIGN GUIDANCE MANUAL (DGM)**” means the document that instructs design engineers on the procedures and formats to be followed in the design of capital

improvement projects for the City of San Antonio. The DGM provides minimum standards for the project development process and deliverables.

- I.8** “**DIRECTOR**” means the Director of City’s Public Works or his/her designee.
- I.9** “**PLANS AND SPECIFICATIONS**” means the construction documents.
- I.10** “**PRIMELINK**” means City’s internet-based project management software for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Consultant.
- I.11** “**PROJECT**” means the capital improvement/construction development undertaking of City.
- I.12** “**PROJECT MANAGEMENT TEAM**” means the assigned City staff overseeing the management of the Project. The Project Management Team typically includes a Project Manager and his or her staff.
- I.13** “**PROPOSAL**” means Consultant’s Proposal to provide services for a project.
- I.14** “**PROPOSED SERVICE PLAN**” means a detailed plan outlining how and when the City-requested Work or Services shall be provided by the Consultant/Contractor.
- I.15** “**SAMSA**” means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties: Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.
- I.16** “**SAWS**” means the San Antonio Water System.
- I.17** “**SCHEDULE OF VALUES**” means the values allocated to materials and various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as City may require.
- I.18** “**SCOPE OF SERVICES**” means the services described in Article IV Scope of Services of this Agreement.
- I.19** “**SERVICES**” means those services described in the Scope of Services.
- I.20** “**TOTAL COMPENSATION**” means the not-to-exceed amount of this Agreement.
- I.21** “**WORK**” means the services required by Agreement, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Consultant or any Sub-Consultant, material suppliers or any other entities for which Consultant is responsible to fulfill Consultant’s obligations.

## ARTICLE II. COMPENSATION

- II.1** The Compensation for all services included in this Agreement and in the Scope of Services for this Agreement shall not exceed \_\_\_\_\_ **DOLLARS, (\$XXX,XXX.XX)**. The amount to be paid to Consultant, including authorized adjustments, is the total amount payable by City to Consultant for performance of the Services under this Agreement. It is agreed and understood such amount shall constitute full compensation to Consultant for Services included in the Scope of Services and shall meet all applicable requirements of City's Design Guidelines. Unless and until City makes further appropriations for any additional services not included in the Scope of Services of this Agreement, the obligation of City to Consultant for Compensation in connection with this Agreement cannot and shall not exceed such sum of \_\_\_\_\_ **DOLLARS, (\$XXX,XXX.XX)** without further amendment to this Agreement
- II.2 REIMBURSABLE EXPENSES.** City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses not agreed upon and accepted in writing by City prior to the execution of this agreement. If Consultant, Sub-Consultant or vendor of Consultant should make an expenditure which, prior to its occurrence, had not been approved in writing by City, either prior to or after the execution of this agreement, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:
- II.2.1** Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under the Agreement. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all reimbursable charges. Travel expenses, if any, shall be negotiated with each Task Order issued. City does not pay for Consultant's travel within SAMSA.
- II.2.2** Mailing, courier services and copies of documents requested in writing by City in excess of the copies which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope/Budget without further approval of City.
- II.2.3** Graphics, physical models and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope/Budget without further approval of City.
- II.2.4** City shall not allow a markup on any of the above reimbursable items and

only shall reimburse actual costs incurred with City's written approval.

### ARTICLE III. METHOD OF PAYMENT

**III.1** Payments to Consultant shall be in the amount shown on the invoices and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed in accordance with the professional standard of care set forth in **ARTICLE XX.1** and to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which previously have not been approved by the Director. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

**III.1.1** Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Compensation for Additional Professional Services (attached hereto, incorporated by reference herein and labeled as "**EXHIBIT A**").

**III.1.2** Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, with all required back-up, within **PRIMELink**. The invoice shall indicate the value of the additional services performed to date.

**III.2** Consultant shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others, in connection with a Project and the performance of the Work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such ten-day period shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City a bona fide dispute associated with an unpaid Sub-Consultant and its provided service. Consultant shall include a provision in each of its Sub-Consultant agreements imposing the same payment obligations on Sub-Consultants as are applicable to Consultant hereunder and, if City so requests, shall provide copies of such payments by Sub-Consultants to City. If Consultant fails to make payment promptly to a Sub-Consultant for Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.

**III.3** Consultant warrants that title to all Services covered by an Application for Payment shall pass to City no later than the time of payment by City. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have previously been issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of any and all liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided Work relating to this Agreement. Consultant shall indemnify and hold City harmless from any liens, claims,

security interests or encumbrances filed by anyone claiming by, through or under the items covered by payments made by City to Consultant.

**III.4** Consultant may submit a request for Partial Compensation prior to the completion of services. A request for Partial Compensation must be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report and approved by the City. Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each Service/Project, as may be described in fee schedule and/or hourly rates included in “**EXHIBIT B**” hereto.

**III.5** Project Close Out and Final Payment:

**III.5.1** Final billing shall indicate “Final Bill - No Additional Compensation is due to Consultant”.

**III.5.2** City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

**III.5.2.1** Delays in the performance of Consultant's work;

**III.5.2.2** Third-party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to City is provided by Consultant;

**III.5.2.3** Failure of Consultant to make payments properly to Sub-Consultants or vendors for labor, materials or equipment;

**III.5.2.4** Reasonable evidence Consultant's work cannot be completed for the amount unpaid under this Agreement;

**III.5.2.5** Damage to City; or

**III.5.2.6** Persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

**III.5.3** When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within a reasonable time. City shall not be deemed in default by reason of withholding compensation as provided for in this **ARTICLE III**.

**III.5.3.1** In the event of any dispute(s) between the Parties, regarding the amount properly compensable for any Phase or as final compensation, or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and

in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.

**III.5.3.2** City shall make final compensation of all sums due Consultant not more than thirty (30) calendar days after Consultant's execution and delivery of a final Pay Application.

**III.5.3.3** Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.

**III.5.3.4** Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services or the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

**III.6 INTERNET-BASED PROJECT MANAGEMENT SYSTEM.** City shall administer its services through an Internet-Based Management System (hereafter referred to as "PRIMELink"). Consultant shall conduct its communication with City through PRIMELink and Consultant shall perform all project-related functions utilizing PRIMELink. Communications shall include correspondences, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and any other administrative activities. City shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all necessary Project Team Members. All of Consultant's invoices shall be submitted through PRIMELink.

#### **ARTICLE IV. SCOPE OF SERVICES [SUBJECT TO REVISION AS APPLICABLE]**

**IV.1** Consultant shall provide Civil Engineering Services for the 2022-2027 General Obligation Bond Program and all associated services required for Consultant to provide such Services, pursuant to this Agreement, as further defined in individual Task Orders.

Services may include, but are not limited to, the following.

- IV.2** Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday services, as requested by City. Persons retained by Consultant to perform Work pursuant to this Agreement shall be employees or Sub-Consultants of Consultant.
- IV.3** Consultant shall not commence Work pursuant to this Agreement until thoroughly being briefed on the scope of a project and being notified by City in writing to proceed. Should the scope of Work subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.
- IV.4** Consultant shall comply with the standards of City’s Design Guidance Manual throughout the duration of the subject Project and this Agreement, unless specifically and explicitly excluded from doing so in the approved Scope of Services attached hereto, incorporated by reference herein and labeled as “**EXHIBIT A**” and as described in this **ARTICLE IV**.
- IV.5** Consultant shall adhere to the requirements of the design phases described in City’s Design Guidance Manual, to include performing the tasks and submitting deliverables as described therein, unless specifically and explicitly excluded in the approved Scope of Service in “**EXHIBIT A**” hereto and as described in this **ARTICLE IV**.
- IV.6** Consultant acknowledges and accepts its responsibilities, as defined and described in City’s General Conditions for City of San Antonio Construction Contracts, attached hereto, incorporated by reference herein and labeled as “**EXHIBIT D**”.
- IV.7** Consultant, in consideration for the compensation herein described, shall render the professional services described in this **ARTICLE IV** necessary for the advancement of the Project through Substantial Completion to Final Completion.
- IV.8** Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein and in accordance with the Compensation for Additional Professional Services, attached and incorporated herein and labeled as “**EXHIBIT A**”. The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with and approval by City for each authorized service task and as provided in this Agreement.
- IV.9** Compensation for Additional Professional Services, which includes pre-priced tasks and/or hourly rates, is described in “**EXHIBIT B**” hereto. Consultant may submit a request for Partial Compensation prior to the completion of Additional Professional Services. A request for Partial Compensation must be accompanied by a progress report detailing the Additional Professional Services performed. Any partial payment made shall be in proportion to the Additional Professional Services performed, as reflected in the progress report and approved by the City.

## **ARTICLE V. TIME AND PERIOD OF SERVICE**

- V.1** The term of this Agreement shall commence upon its approval by the San Antonio City Council and upon the execution by both parties and shall remain in force for the period of one (1) year, herein referred to as the “Initial Term”.
- V.2** As the enabling Ordinance provides, City shall retain an option to extend this Agreement for **three (3) additional one-year periods**, hereafter referred to as the “Extension Period(s)”. The Director shall have the authority to exercise such options at his/her discretion.
- V.3** Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the services under **ARTICLE IV** in a prompt and continuous manner, so as to not delay the development of services and so as to not delay the construction of the work for the Project, in accordance with the schedules approved by City. City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the Project
- V.4** Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond Consultant's reasonable control. Within twenty one (21) calendar days from the occurrence of any event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement.
- V.5** This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract and the completion of the Project, including any extra work and any required extensions thereto, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

## **ARTICLE VI. (RESERVED)**

## **ARTICLE VII. COORDINATION WITH THE CITY**

- VII.1** Consultant shall hold periodic conferences with City representative(s) through the end of a project. A project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City’s current policies and standards. To assist Consultant in this project coordination, City shall make available for Consultant's use in planning for a project all existing plans, maps, statistics, computations

and other data in City's possession, relative to existing facilities and to a particular project, at no cost to Consultant. However, any and all such information shall remain the property of City and immediately shall be returned by Consultant upon termination or the completion of a project or if so instructed by City.

- VII.2** The Director shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Consultant's services.
- VII.3** City promptly shall give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, in the work of a Contractor or any development that affects the scope or timing of Consultant's services.
- VII.4** Unless otherwise required by City, City shall furnish approvals and permits from all governmental authorities having jurisdiction over a project and other such approvals and consents from others, as may be necessary, for the completion of a project. Consultant shall provide City reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Consultant pursuant to other provisions of the Agreement, but Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

## **ARTICLE VIII. REVISIONS TO DOCUMENTS**

Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents, as may be required to meet the needs of City, which are within the Scope of the Project. After the written approval by City of drawings, reports or other documents and specifications at the end of each phase of Services, any revisions, additions or other modifications made at City's request, which further involve services and expenses to Consultant, shall require an amendment approved in writing by City prior to commencing work.

## **ARTICLE IX. OWNERSHIP OF DOCUMENTS**

- IX.1** All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by Consultant shall remain the property of Consultant as instruments of service. However, it is understood that City shall have free access to all such Consultant information and City is granted the right to make and retain copies of Consultant's drawings, estimates, specifications and all other documents and data. Any reuse of Consultant's information without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant.

- IX.2** Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, immediately shall be delivered to City at no additional cost to City, upon request or termination or completion of this Agreement without restriction on its future use.
- IX.3** Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City.
- IX.4** Consultant hereby assigns all statutory and common law copyrights to City of any copyrightable Work product that in part or in whole was produced from this Agreement, including all equitable rights. No reports, maps, documents or other copyrightable Works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, drawings or other copyrightable Work produced under this Agreement shall become the property of City (excluding any instrument of services, as defined in **Article XI.1** herein, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction, against City, insofar as the same are based on any claim that materials or Work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.
- IX.5** Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers or other persons, subsequent to the completion of the Project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, to include electronic copies, subsequent to the completion of the Project.
- IX.6** Copies of documents, which may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) that are furnished by Consultant to City only are for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- IX.7** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any

know-how, methodologies or processes used by Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

## **ARTICLE X. TERMINATION AND/OR SUSPENSION OF SERVICES**

### **X.1 RIGHT OF EITHER PARTY TO TERMINATE FOR DEFAULT.**

**X.1.1** This Agreement may be terminated by either party for substantial failure by the other party to perform, through no fault of the terminating party, in accordance with the terms of this Agreement and a failure to cure said failure, as provided in this **Article X**.

**X.1.2** The party not in default shall issue a written and signed Notice of Termination (citing this **Article X.1.2**) to the other party declaring the other party to be in default and stating the reason(s) why the other party it is in default. Upon receipt of such written Notice of Default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period, commencing upon receipt of said Notice of Termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

### **X.2 RIGHT OF CITY TO TERMINATE.**

**X.2.1** City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a signed Notice of Termination (citing this **Article X.2.1**), which shall take effect on the twentieth (20th) day following receipt by Consultant of said Notice of Termination and/or upon the scheduled completion date of the performance phase of a project on which Consultant then currently is working, whichever effective termination date occurs first.

### **X.3 RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF CONSULTANT TO TERMINATE.**

**X.3.1** City reserves the right to suspend this Agreement at the end of any phase of a project for the convenience of City by issuing a signed, written Notice of Suspension (citing this **Article X.3.1**) which shall outline City's reasons for the suspension and the expected duration of the suspension. Such expected duration shall, in no way, guarantee what the total number of days of suspension shall occur. Such suspension shall take effect immediately upon Consultant's receipt of said Notice of Suspension.

**X.3.2** Consultant hereby is given the right to terminate this Agreement, in the event

such suspension extends for a period in excess of one hundred twenty (120) days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination (citing this **Article X.3.2**) to City after the expiration of one hundred twenty (120) days from the effective date of a suspension. Termination (under this **Article X.3.2**) shall become effective immediately upon receipt of said written notice by City.

#### **X.4 PROCEDURES CONSULTANT TO FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION.**

- X.4.1** Upon receipt of a Notice of Termination from City and prior to the effective date of termination, unless the Notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set out herein, Consultant immediately shall begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and promptly shall proceed to cancel all existing orders and contracts, insofar as said orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of said Notice of Termination (unless Consultant successfully has cured its cited failure to perform), Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant Consultant an extension to the 30-day time period for submittal of such statement.
- X.4.2** Copies of all completed or partially completed documents and all reproductions of all completed or partially completed documents, prepared under a Task Order pursuant this Agreement prior to the effective date of termination, immediately shall be delivered to City in a form requested by City as a pre-condition to a final payment to Consultant. These documents shall be subject to the restrictions and conditions set forth in **Article IX** herein.
- X.4.3** Upon the above conditions being met, City promptly shall pay Consultant that proportion of the prescribed fee, which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of any fee.
- X.4.4** City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that the failure of Consultant to comply with the submittal of the required statement(s) and document(s), as cited herein, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed by Consultant under this Agreement.
- X.4.5** Failure of Consultant to comply with the submittal of the required statement and documents, as outlined herein, shall constitute a waiver by Consultant of any all rights or claims to collect monies that Consultant otherwise may be so

entitled for services performed under this Agreement.

**X.5 PROCEDURES CONSULTANT SHALL FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION.**

- X.5.1** Upon Consultant's receipt of a written Notice of Suspension, which date also shall be the effective date of the suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and promptly shall proceed to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.
- X.5.2** Consultant shall prepare a statement showing, in detail, the services performed under a Task Order and this Agreement, prior to the effective date of suspension.
- X.5.3** Copies of all completed or partially completed designs, plans and specifications and models, prepared under this Agreement prior to the effective date of suspension, shall be prepared for possible delivery to City but shall be retained by Consultant until such time as City may exercise the right to terminate this Agreement.
- X.5.4** In the event Consultant exercises its right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt of City's Notice of Termination, Consultant promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing, in detail, the services performed under this Agreement prior to the effective date of suspension.
- X.5.5** Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.
- X.5.6** Upon the above conditions being met, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of any fee.
- X.5.7** City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that failure of Consultant substantially to comply with the submittal of the required statement(s) and document(s), as outlined above, shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

## ARTICLE XI. CONSULTANT'S WARRANTY

Consultant warrants the services required under this Agreement shall be performed with the same degree of professional skill and care typically exercised by similar consulting professionals performing similar services in Bexar County, Texas. Consultant further warrants it has not employed or retained any company or person other than a bona fide employee, working solely for Consultant, to solicit or secure this Agreement, and it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of **ARTICLE X**.

## ARTICLE XII. NON-DISCRIMINATION POLICY

**XII.1 NON-DISCRIMINATION.** As a party to this contract, Consultant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consultant represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges that it 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 Consultant from participating in City contracts, or other sanctions. This **Article XIII.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

**XII.2 SUB-CONSULTANTS.** Upon execution of this Agreement by Consultant, Consultant shall provide City a detailed outreach and diversity plan for approval by City, including Consultant's list of Sub-Consultants, and shall require all of its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's web site. Consultant shall obtain approval in writing from City prior to adding,

substituting or deleting any listed and approved Sub-Consultant from a project.

### **ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST**

Consultant shall not assign or transfer Consultant's interest in this Agreement without the written consent of City.

### **ARTICLE XIV. INSURANCE REQUIREMENTS**

- XIV.1** Prior to the commencement of any Work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Public Works Department's (hereafter referred to as "PW") Contract Services Division, which clearly shall be labeled "NAME OF PROJECT" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by Consultant, attesting that the furnished Certificate(s) represent Consultant's current insurance coverages. City shall not accept a Memorandum of Insurance or Binder from Consultant as proof of insurance. The certificate(s) shall have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. 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 PW Contract Services Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- XIV.2** City reserves the right to review the insurance requirements of this **Article XIV** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance will City allow modification of insurance coverages whereby City may incur increased risk.
- XIV.3** Consultant's financial integrity is of interest to City; therefore, subject to Consultant's obligation to maintain reasonable deductibles in such amounts as are approved by Consultant's insurance companies, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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. These listed insurance limits are standard limits for all City projects/contracts. If a project/contract does not justify these standard limits of insurance coverages, Consultant may request a review and modification of the City's insurance requirements, to be considered on a project-by-project/contract-by-contract basis:

#### **TABLE TO FOLLOW**

<b><u>TYPE</u></b>	<b><u>AMOUNTS</u></b>
<b>XIV.3.1.</b> Workers' Compensation <b>XIV.3.2.</b> Employers' Liability	\$1,000,000.00-E.L. each accident \$1,000,000.00-E.L. disease-each employee \$1,000,000.00-E.L. disease-policy limit
<b>XIV.3.3.</b> 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. Explosion, Collapse, Underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of:  \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage must include per project aggregate. <p style="text-align: right;">-</p>
<b>XIV.3.4.</b> Business Automobile Liability:	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of:  \$1,000,000.00 per occurrence
<b>XIV.3.5.</b> Professional Liability (Claims-made basis):  To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

City may request, without expense to City, to inspect copies of Consultant's policies and endorsements as they apply to the limits and forms required by City.

**XIV.4** Consultant agrees to require, by written contract, that all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same insurance coverage required of Consultant herein and provide to Consultant a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall acquire said certificate and endorsement, prior to the commencement of any Work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Article XIV.3.5**. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- XIV.5** If City requests a copy/copies of an insurance policy, Consultant promptly shall comply and shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Consultant's policy, City shall submit the received request, along with Consultant's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Consultant's policy information. Consultant and City agree that City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City will provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant's information.
- XIV.6** Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:
- XIV.6.1.** Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- XIV.6.2.** Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;
- XIV.6.3.** Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and
- XIV.6.4.** Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.
- XIV.7** Within ten (10) calendar days of receipt by Consultant of a notice of cancellation or the 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 under this Agreement, should there be a lapse in insurance coverages at any time. Failure of Consultant to both provide and maintain the required insurance coverages shall constitute a material breach of this Agreement.
- XIV.8** 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 herein required, City shall have the right to order Consultant immediately to stop Work and Consultant immediately shall stop work until Consultant demonstrates compliance with the insurance requirements hereof.

- XIV.9** Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its Sub-Consultants' and/or Subcontractors' performance of the Work covered under this Agreement.
- XIV.10** It is agreed that Consultant's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by the City of San Antonio, for liability arising out of operations under this Agreement.
- XIV.11** It is understood and agreed that the insurance coverages required are in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided by Consultant.
- XIV.12** Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

#### **ARTICLE XV. INDEMNIFICATION**

- XV.1** CONSULTANT FULLY WILL INDEMNIFY and HOLD HARMLESS CITY and its officials, officers, agents, employees, volunteers, directors and representatives (hereafter referred to as "indemnitee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and defense costs, made upon indemnitee caused by or resulting from any act of negligence, intentional tort, intellectual property infringement or failure to pay a Sub-Consultant, Subcontractor or Supplier committed by Consultant or its Agent, Consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this Agreement. This Indemnification shall not apply to any liability resulting from Indemnitee's negligence or willful misconduct in instances where the negligence or willful misconduct causes personal injury, bodily injury, death or property damage. If a court of competent jurisdiction finds Consultant and City jointly liable, liability shall be apportioned comparatively in accordance with the laws of the State without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under State law.
- XV.2** The provisions of this **Article XV** solely are 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 City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

#### **ARTICLE XVI. CLAIMS AND DISPUTES**

**XVI.1** As used herein, a Claim is a demand or assertion by one of the parties to this Agreement seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief, with respect to the terms of the Agreement. The term “Claim” also may include other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims shall be initiated by notice to the other party electronically through *PRIMELink*. A Claim of Consultant, whether for additional compensation, additional time or other relief, shall be sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

**XVI.2** A Claim by either Consultant or City shall be initiated electronically through *PRIMELink* and sent to the other party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.

**XVI.3** Pending final resolution of a Claim, except as otherwise agreed upon in writing, Consultant shall proceed diligently with performance of a Task Order and this Agreement and City shall continue to make payments to Consultant in accordance with this Agreement.

**XVI.4** If Consultant wishes to make a Claim for an increase in the time for performance, notice to City through *PRIMELink*, as stated in this **Article XVI** herein, shall be given. Consultant’s Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**XVI.5** Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply to claims by both Consultant and City:

**XVI.5.1** No consequential damages shall be allowed.

**XVI.5.2** Damages are limited to any extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.

**XVI.5.3** No profit will be allowed on any damage claim.

**XVI.6** Nothing in this **Article XVI** shall be construed to waive City’s Governmental Immunity from a lawsuit, which Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.

**XVI.7 ALTERNATIVE DISPUTE RESOLUTION.**

**XVI.7.1** Each party to this Agreement is required to continue to perform its

obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable to perform under the circumstances.

**XVI.7.2** Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Agreement agree they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this **Article XVI.7.2** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

**XVI.7.3 MEDIATION.**

**XVI.7.3.1** In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

**XVI.7.3.2** Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon the written agreement of both parties.

**XVI.7.3.3** In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this **Article XVI** shall be deemed to have occurred.

**XVI.7.3.4** The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in San Antonio, Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

**XVI.7.4** Consultant and City expressly agree that, in the event of litigation, both parties waive rights to payment of attorneys' fees that might otherwise be

recoverable pursuant to 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 payment of Attorneys' fees.

## **ARTICLE XVII. SEVERABILITY**

If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any section, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

## **ARTICLE XVIII. INTEREST IN CITY CONTRACTS PROHIBITED**

**XVIII.1** No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City or shall financially be interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.

**XVIII.2** Consultant acknowledges that it is informed that the Charter of City and its Ethics Code prohibits a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to 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; a City officer or employee's parent, child or spouse; a business entity in which the City officer or employee, or the officer 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; a business entity in which any individual or entity above listed is a Sub-Consultant or Subcontractor on a City contract; and/or a partner or a parent of a subsidiary business entity.

**XVIII.3** Consultant warrants, certifies and this Agreement is made on City's reliance thereon that Consultant, its officers, employees and agents neither are officers nor employees of City. Consultant further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

## **ARTICLE XIX. TEXAS GOVERNMENT CODE §2270.002**

State Prohibitions on Contracts:

This section 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.

“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.

**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 submitting an offer to or 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 the contract for material breach.

**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 submitting an offer to or 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.

**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 submitting an offer to or 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 XX. CONFLICTS OF INTEREST DISCLOSURE**

Consultant shall disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so will constitute a violation of City's Code. To be “associated” in a business venture or business dealings includes: being in a partnership or joint venture with a City officer or employee; having a contract with a City officer or employee; being joint owners of a business with a City officer or employee; owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or having an established business relationship with a City Officer or employee as a client or customer.

**ARTICLE XXI. STANDARD OF CARE/LICENSING**

**XXI.1** Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members

of the same profession currently practicing under similar circumstances.

**XXI.2** Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning a project including, but not limited to, scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

**XXI.3** Consultant acknowledges the Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723 and/or the Texas Board of Architectural Examiners, 505 E. Huntland Dr., Suite 350, Austin, Texas 78752, (512) 305-9000 has licensing jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

## **ARTICLE XXII. RIGHT OF REVIEW AND AUDIT OF CONSULTANT'S RECORDS**

**XXII.1** Consultant grants City and its designees the right to audit, examine or inspect, at City's election, all of Consultant's Records relating to the performance of Work under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Consultant's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain Consultant's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute.

**XXII.2** "Consultant's Records" shall include any and all information, materials and data of every kind and character generated as a result of the Work under any Task Order and this Agreement. Example of Consultant Records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

**XXII.3** City agrees that it will exercise its right to audit, examine or inspect Consultant's Records only during regular business hours. Consultant agrees to allow City and City's designee access to all of Consultant's Records, Consultant's facilities and the current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

**XXII.4** Consultant shall include this audit clause in any Sub-Consultant and Subcontractor,

Supplier or vendor contract.

### **ARTICLE XXIII. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement only may be amended by written instrument signed by both City and Consultant.

### **ARTICLE XXIV. VENUE**

The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in San Antonio, Bexar County, Texas.

### **ARTICLE XXV. NOTICES**

Except as may be provided elsewhere herein, all notices, communications and reports required or permitted under this Agreement shall personally be delivered or mailed to the respective party by depositing the same with the United States Postal Service and addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) days of mailing.

**If intended for City, to:**

Finance Department  
Attention: Purchasing Division  
Construction  
P.O. Box 839966  
San Antonio, Texas 78205

**If intended for Consultant, to:**

**NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

### **ARTICLE XXVI. INDEPENDENT CONTRACTOR**

In performing services under this Agreement, the relationship between City and Consultant is that of an independent contractor. By the execution of this Agreement, Consultant and City do not change the independent contractor status of Consultant. Consultant shall exercise independent judgment in performing its duties and obligations under this Agreement and solely is responsible for setting working hours, scheduling or prioritizing the Workflow and determining how the Work is to be performed. No term or provision of this Agreement or act of Consultant, in the performance of this Agreement, shall be construed as making Consultant the agent, servant or employee of City or making Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which City provides to or for its employees.

**ARTICLE XXVII CAPTIONS**

The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

**ARTICLE XXVIII CONFLICT RESOLUTION BETWEEN DOCUMENTS**

Consultant hereby agrees and acknowledges if anything contained in Consultant’s prepared Scope of Services, attached hereto and labeled as **EXHIBIT A**, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement and/or with City’s General Conditions for City of San Antonio Construction Contracts, attached hereto and labeled as **EXHIBIT D**, this Agreement and/or City’s General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

**IN WITNESS WHEREOF**, the City of San Antonio lawfully caused these present to execute this Agreement by the hand of City Manager, or his/her designee; Consultant, acting by the hand of the undersigned below, thereunto authorized does now sign, execute and deliver this document.

Executed by City and effective on: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF SAN ANTONIO**

**NAME OF FIRM**

By: \_\_\_\_\_

By: \_\_\_\_\_

ERIK WALSH  
CITY MANAGER

NAME  
TITLE

**APPROVED:**

\_\_\_\_\_  
CITY ATTORNEY

## **EXHIBIT A – SCOPE OF SERVICES**

**END OF EXHIBIT A**

**EXHIBIT B – PROJECT FEE SUMMARY**

**END OF EXHIBIT B**

**EXHIBIT C – SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY  
(SBEDA) PROGRAM CONTRACT PROVISIONS**

**END OF EXHIBIT C**

**EXHIBIT D – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO**

**END OF EXHIBIT D**

**EXHIBIT E – ADDENDA**

**END OF EXHIBIT E**