

STATE OF TEXAS §
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COUNTY OF BEXAR §

- 2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, subject to and contingent upon subsequent appropriation.

III. SCOPE OF SERVICES

- 3.1 GENERAL DESCRIPTION OF SERVICES. Consultant agrees to provide City a Reconciled Plan and Project Inventory for Brackenridge Park through input from the Brackenridge Park Stakeholder Advisory Committee, Technical Committee (COSA staff and partner organizations), and the general public. Consultant agrees to facilitate public input and develop evaluation methodology and prioritization framework in forming recommendations.
- 3.2 PLAN RECONCILIATION PROCESS. Consultant shall provide City the following services, and as more fully described in Exhibit I:
- 3.2.1 Consultant shall integrate and reconcile the Planning Documents into a Reconciled Project Inventory for the Park with focus on the publicly accessible and City operated facilities within the Park.
 - 3.2.2 Consultant shall facilitate a public process utilizing the input and guidance of Stakeholder Advisory Committee.
 - 3.2.3 Consultant shall use professional expertise and experience to facilitate a stakeholder process to compile and integrate a list of projects into a comprehensive list of projects including the need/benefit of each project to Park to deliver a Reconciled Project Inventory.
 - 3.2.4 Consultant shall gain a thorough understanding of the Park including its history, culture, facilities, natural ecosystems, and users. Consultant shall have a comprehensive knowledge of the details of each of the plans including consulting with relevant parties responsible for producing the plans to understand the purpose and value of identified projects to use, function and appreciation of the Park, its resources and value to the community.
 - 3.2.5 Consultant shall apply the ***Core Principles of Public Engagement*** as adopted for Midtown TIRZ projects including:
 - (1) Careful Planning and Preparation: Ensure that all design, organization, and convening serve both a clearly defined purpose and the needs of the community and visitors.
 - (2) Participatory Culture: Champion a culture of sustained community engagement whenever we expand our physical grounds or programming.
 - (3) Inclusion and Demographic Diversity: Seek diverse people, voices, ideas, and information.

- (4) Openness and Learning: Be open to exploring new ideas; apply new information to generate new options; rigorously evaluate public engagement activities for effectiveness.
 - (5) Transparency and Trust: Commit to being clear and open about our public engagement process; always maintain a public record of our engagement process organizers, sponsors, and the range of views and ideas expressed.
 - (6) Impact and Trust: Ensure that each participatory effort has real potential to make a difference and that participants are aware of that potential.
- 3.2.6 Consultant shall facilitate the development or identification of an equity evaluation process for the implementation of capital projects. The equity evaluation shall be coordinated with the City's Office of Equity for the purposes of advancing social justice and equity and reduce disparities experienced by marginalized residents.
- 3.2.7 Consultant shall develop, manage, and implement a process with specific milestones to develop the Reconciled Project Inventory. Activities shall include, but not be limited to, preparing for, and attending meetings; preparing for and holding Park tours; creating and delivering presentations including audio/visual materials; compiling information into reports; conducting interviews; performing relevant research of materials; and other activities as needed to complete the project comprehensively and successfully.
- 3.2.8 Consultant shall ensure that all documents and presentations are reviewed and approved by City and Brackenridge Park Conservancy at least 3 business days prior to finalizing and publication of any such documents and presentations.
- 3.3 DELIVERABLES. Consultant shall provide City the following deliverables:
 - 3.3.1 Throughout the Term of this Agreement, Consultant shall maintain a shared project portal/file share, which shall be accessible to City and Brackenridge Park Conservancy to include all working documents, presentations, and research in support of the project.
 - 3.3.2 Consultant shall deliver to City Consultant's initial draft of the Reconciled Project Inventory no later than January 8, 2024.
 - 3.3.3 Consultant shall deliver to City an Equity Evaluation process to be used by City and City's Midtown TIRZ Board when considering the funding and implementation of future projects in the Park no later than April 1, 2024.
 - 3.3.4 Consultant shall deliver to City a Reconciled Project Inventory in a user-friendly digital, searchable format that can be shared publicly and printed. Consultant shall deliver ten printed copies of the final deliverable to City no later than April 1, 2024.
- 3.4 Consultant shall discharge its duties under this Agreement as a prudent expert solely in the interests of the City with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this

Agreement and in a manner that avoids conflicts of interest and self-dealing. Consultant shall be sufficiently staffed with personnel qualified to render all its services specified in this Agreement. Consultant shall conduct the reconciliation process with minimal disruption and interference with City's normal day-to-day operations.

- 3.5 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. All work performed by Consultant shall be performed to the satisfaction of Director as defined in Section 1.4 of this Agreement. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

- 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 One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) as total compensation, to be paid to as follows:
- 4.1.1 Upon commencement of this Agreement, Consultant shall invoice City \$37,500.00 for pre-payment of services described in Sections 3.1, 3.2 and 3.3.1 of this Agreement.
 - 4.1.2 Consultant shall invoice City \$37,500.00 upon City's receipt of the deliverable described in Section 3.3.2 of this Agreement.
 - 4.1.3 Consultant shall invoice City \$75,000.00 upon City's receipt of the deliverables described in Section 3.3.3 and Section 3.3.4 of this Agreement.
 - 4.1.4 City shall pay Consultant within thirty (30) days of receipt of Consultant's invoice(s), subject to the provisions of Section 3.5 and 4.3 of this Agreement.
 - 4.1.6 In the event this Agreement is terminated early for any reason, Consultant shall return all unearned payments within fifteen (15) calendar days of such termination.
- 4.2 No additional fee or expense 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 and approved by Director.
- 4.3 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

- 4.4 INVOICES. Consultant invoice City for services rendered in a form acceptable to City, which City shall pay within thirty (30) days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio Accounts Payable at: accounts.payable@sanantonio.gov with a copy to Shanon.Miller@sanantonio.gov.

V. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

- 5.1 Any and all writings, documents, or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents, and information as City desires, without restriction.
- 5.3 INTELLECTUAL PROPERTY. Consultant shall pay all royalties and licensing fees incurred performing services required under this Agreement. Consultant shall hold City harmless and indemnify City from the payment of any royalties, damages, losses, or expenses including attorney's fees for suits, claims, or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials, and methods used by Consultant in performing services under this Agreement. Consultant shall defend all suits for infringement of any Intellectual Property rights. 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 City.
- 5.3.1 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant shall immediately obtain, at Consultant's sole expense, the necessary license(s) or rights that allow City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or, alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated. Consultant shall reimburse City for any expense incurred by City to implement emergency backup measures if City is prevented from using the programs, hardware, or both the programs and hardware while a dispute is pending.
- 5.3.2 Consultant agrees to: assume the defense of any claim, suit, or proceeding brought against 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; assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and indemnify City against any monetary damages and/or costs awarded in such suit;

Provided that:

- (1) Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with City's Attorney

during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of City;

- (2) The software or the equipment is used by 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;
- (3) The liability claimed shall not have arisen out of City's negligent act or omission; and,
- (4) City promptly provide Consultant with written notice within fifteen (15) days following the formal assertion of any claim with respect to which City asserts that Consultant assumes responsibility under this Section.

5.3.3 The indemnification, defense, and hold harmless obligation described in this Section 5.3 of this Agreement shall not apply to claims arising from City's alteration of any material provided under this Agreement or City's use of such materials other than their directed or intended use.

5.4 OWNERSHIP AND LICENSES. Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Consultant pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Consultant. The term "**local government record**" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

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 services rendered under this Agreement ("**documents**"), and shall make such materials available to City at City offices at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal of this Agreement, and the record retention period established in this Agreement, 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 all documents produced as a result of services provided under this Agreement for a period of four (4) years ("**retention period**") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving, or concerning this documentation or the services provided under this Agreement, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that the City shall have access to any and

all such documents at all times, as deemed necessary by City, during the retention period. City may, at its election, require the Consultant to return the documents to the 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, if Consultant receives any request for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant understands and agrees that City will process and handle all such requests as requests submitted under the Texas Public Information Act, if applicable.

VII. TERMINATION

- 7.1 “**Termination**” of this Agreement shall mean termination by expiration of the Term as stated in Article II. Term, or earlier termination pursuant to any provision of this Agreement.
- 7.2 TERMINATION WITHOUT CAUSE. This Agreement may be terminated by City without cause upon thirty (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 XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 DEFAULTS WITH OPPORTUNITY FOR CURE. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have thirty (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 consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant’s future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4.1 Bankruptcy or selling substantially all of company’s assets; or
- 7.4.2 Failing to perform or failing to comply with any covenant required.
- 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 in this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

- 7.6 Regardless of how this Agreement is terminated, Consultant shall 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, under this Agreement, 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 rights 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 under this Agreement or other action.

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: Shanon Miller, Director
Office of Historic Preservation
P.O. Box 839966
San Antonio, Texas 78283

If intended for Consultant, to:

Ford, Powell & Carson Architects & Planners, Inc.
Attn: Jay Loudon, Principal
420 Broadway, Suite 100
San Antonio, Texas 78205

XIV. NON-DISCRIMINATION

- 9.1 NON-DISCRIMINATION. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established.
- 9.2 COMMERCIAL NONDISCRIMINATION POLICY COMPLIANCE. As a condition of entering into this Agreement, Consultant represents and warrants that it has complied with throughout the course of any solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the Small Business Economic Development Advocacy Small Business Economic Development Advocacy ("**SBEDA**") Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant 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 in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Consultant 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 Consultant from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to 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 subcontractor and supplier agreements entered pursuant to City contracts.

X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Consultant must provide a completed Certificate(s) of Insurance to City's Information Technology Services Department. Certificate must be:
- clearly labeled with the legal name of the event in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance); and
 - properly endorsed and have the agent's signature, and phone number.
- 10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the Office of Historic Preservation. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

- 10.3 If 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 contract.
- 10.4 City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 10.5 Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If Consultant claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
*1. Workers' Compensation *2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors* c. Products/completed operations d. Personal/Advertising Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
*4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$250,000 per occurrence
5. Professional Liability (Claims Made) *To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$500,000 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.
*6. Cyber Liability	\$500,000 per claim \$500,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
*If Applicable	

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

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

City of San Antonio
Attn: Office of Historic Preservation
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

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

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

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

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

- 10.14 Consultant and any subcontractor are responsible for all damage to their own equipment and/or property resulting from their own negligence.

XI. INDEMNIFICATION

- 11.1 **Consultant covenants and agrees to: FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers, and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant's activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 11.2 The provisions of this 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 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. 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.
- 11.3 DEFENSE COUNSEL. City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation under this Agreement 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 period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 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 in this Agreement shall not be limited in any way by any limitation on the amount or type of

damage, compensation or benefit payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees, or its subcontractors shall perform all necessary work.
- 12.2 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 in writing by Director prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting under this Agreement shall be subcontracted only by written contract and, unless specific waiver is granted in writing by City, and 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 reference in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 12.4 Except as otherwise stated in this Agreement, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duty, by transfer, by subcontracting or any other means, without the consent of City, as evidenced by passage of an ordinance. 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.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. Violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONSULTANT

Consultant covenants and agrees that he or she is an independent Consultant and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control and exclusive right to control the details of the work performed under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, Consultants, subcontractors

and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, Consultants, subcontractors and consultants, and nothing in this Agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures 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.

XIV. CONFLICT OF INTEREST

14.1 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:

- 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.

14.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XV. AMENDMENTS

15.1 Except where this Agreement expressly provide otherwise, any alteration, addition, or deletion to the terms of, shall be effected by amendment, in writing, executed by both by both Director and Consultant. Director shall have authority to execute amendments on behalf of City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by City.

XVI. 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 in this Agreement; 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.

XVII. LICENSES/CERTIFICATIONS

Consultant represents that Consultant and any other person designated to provide services under this Agreement 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 in this Agreement.

XVIII. COMPLIANCE

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

XIX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided, a waiver by either Party of a breach of any term, condition, covenant or guarantee 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 in this Agreement. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option in this Agreement, 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 XV. 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 under this Agreement or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE

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

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

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

20.4 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL. Texas Government Code §2270.002 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.

“Company” means a for-profit sole proprietorship, 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.

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.

- 20.5 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 this Agreement 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.

XXI. 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 in this Agreement.

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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

XXIV. INCORPORATION OF EXHIBITS

Each if the exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be interpreted with this document taking priority over all exhibits:

Exhibit I – Scope of Work Brackenridge Park Reconciliation.

XXV. ENTIRE AGREEMENT

This Agreement constitutes the final and entire agreement between the Parties. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties, unless same is in writing, dated after the commencement date of this Agreement, and duly executed by the Parties, in accordance with Article XV. Amendments.

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

CITY OF SAN ANTONIO

**FORD, POWELL & CARSON
ARCHITECTS & PLANNERS, INC.**

Erik Walsh,
City Manager

Jay Loudon,
Principal

Date: _____

Date: _____

APPROVED AS TO FORM:

Alma Rosa Lozano
Assistant City Attorney