

On-Call Real Estate Appraisal Services Professional Services Agreement

FIRM NAME

D/B/A FIRM NAME

The On-Call Real Estate Appraisal Services Agreement is undertaken as of the Effective Date herein between the City of San Antonio and the Appraiser designated below.

Authorizing Ordinance: **XX-XX-XXXX-XXX**

Effective Date:

Approval by the San Antonio City Council and upon the execution by both parties.

Appraiser **FIRM NAME**
D/B/A FIRM NAME

Appraiser's Address: **FIRM ADDRESS**
CITY, STATE XXXXX

Initial Term: 2 Years

Extension Periods: Option to extend this Agreement for three (3) additional one-year periods at the Director's sole discretion

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1 Definitions.

1.1 "Appraiser" means **FIRM NAME**

1.2 "City" means the City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or his/her designee.

1.3 "Compensation" means amounts paid to Appraisers for services rendered pursuant to this Agreement

1.4 "Director" means the director of the City of San Antonio (City) Public Works Department (PWD)

1.5 "Party" means City or Appraiser individually

1.6 "Parties" means City and Appraiser collectively

1.7 "PRIME*Link*" means City's internet-based project management software used for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Appraiser.

1.8 "Project" means any Task Order assigned to Appraiser by City under this Agreement.

1.9 "Project Property" means property to which an issued Task Order, pursuant to this Agreement, relates.

1.10 "Proposed Task Order Request" mean a request to Appraiser to submit a Time and Cost Estimate for a specific Project, as further defined herein.

1.11 "SAMSA" means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.

1.12 "Finalized Task Order" means a written agreement, authorized by both parties in the City's PRIME*Link* system and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Task Order as further defined herein.

1.13 "Service" means those services described in the Scope of Services, as set out in an issued Task Order.

1.14 "Task Order" means an approved proposal for a specific project by City from the thatis executed by both parties in PRIME*Link*.

1.15 "Total Compensation" means the not-to-exceed amount of this Agreement.

1.16 "Work" means the services requested by the issued Task Order, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Appraiser or any Sub Consultant, material suppliers or any other entities for which Appraiser is responsible to fulfill Appraiser's Task Order obligations.

2 Scope of Services

2.1 Appraiser shall provide the services defined on **Exhibit A**, attached hereto and incorporated herein by reference. All services by appraiser under this Agreement are as-needed by City unless City otherwise directs in writing with respect to a specific class of services.

- 2.2 City may assign Work (Projects or Task Orders) to Appraisers. For each Project or Task Order assigned to Appraiser under this Agreement, City and Appraiser shall establish agreed upon Project performance measurers or Project performance goal(s).
- 2.3 Appraiser shall work closely with Director or his/her designee and appropriate City officials and shall perform all tasks related to Projects to timely fulfill Project goals.
- 2.4 Appraiser shall cooperate with City and deliver to City, in a form satisfactory to City all documents arising out of Appraiser's services.

3 Compensation

- 3.1 The Compensation for all services included in this Agreement SHALL NOT EXCEED **Seventy Thousand Dollars and No/100 (\$70,000.00) per year.** Any extension of this Agreement, up to three (3) additional one-year "Extension Periods," may increase the total amount of this Agreement to an amount not to exceed **Three Hundred Fifty Thousand Dollars and No/100 (\$350,000.00).**
- 3.2 Appraiser shall submit a Time and Cost Estimate for each Project or Task Order that City request to be performed under this Agreement. City either will approve or disapprove each Time and Cost Estimate. The City's approval shall be evidenced by a finalized Task Order executed by both parties in PRIMELink. Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into PRIMELink. Each finalized Task Order, as entered into PRIMELink, shall become a part of this Agreement.
 - 3.2.1 Appraiser understands and agrees that City may have entered into multiple agreements with other Appraisers and City has the authority to assign Work/Task Orders using other agreements, at its sole discretion.
 - 3.2.2 Appraiser understands and agrees City makes no minimum guarantees with regard to the amount of services, if any, Appraiser may be extended under this Agreement.
- 3.3 Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the not to exceed Time and Cost Estimate.
 - 3.3.1 City shall pay Appraiser for services under this Agreement according to the cost and timeline estimates of **Exhibit C**, attached hereto and incorporated herein by reference.
 - 3.3.2 Except as provided otherwise by this Agreement or in writing by City, Appraiser shall bear all costs and expenses incurred by appraiser under this Agreement including, but not limited to, labor, supervision of work, report reproduction, typing, travel, insurance, communication, advertising computer access, materials, supplies, subcontractor costs, postage, telephone, stationery, rent, and any and all other costs and expenses necessary to complete projects.
- 3.4 This Agreement does not provide Appraiser with exclusive rights to provide appraisal services to City. City reserves the right to perform such services itself or to utilize other appraisers.

4 Method of Payment

- 4.1 Payments to Appraiser shall be in the amount shown on the invoices consistent with the Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfactions shall be judged by the Director or his/her designee in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are judged unsatisfactory and

which previously have not been approved by the Director or his/her designee. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

- 4.1.1 Payment solely may be made based on the services completed and approved by City and the associated unit price for such service, as may be described in Appraiser's proposal/fee schedule (as shown and the approved Task Order).
- 4.1.2 Monthly payments for services performed in the various additional services shall be reviewed by Director or his/her designee upon Appraiser entering itemized invoices, with required back-up and reference to the individual Task Order, in PRIMELink. Entered invoices shall indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.
- 4.2 Appraiser 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. Appraiser's failure to make payments within such ten-day period shall constitute a material breach of this Agreement, unless Appraiser is able to demonstrate to City a bona fide dispute associated with an unpaid Consultant, Sub-Consultant, Contractor or Subcontractor and the provided service. Appraiser shall include a provision in each of its Consultant, Sub-Consultant, Contractor and Sub-Contractor agreements imposing the same payment obligations on Consultant, Sub-Consultants, Contractor and Subcontractor as are applicable to Appraiser hereunder and, if City so requests, Appraiser shall provide copies of such payments made to Consultant, Sub-Consultants, Contractors and Subcontractors to City. If Appraiser fails to make payment promptly to a Consultant, Sub-Consultant, Contractor and/or subcontractor for services for which City has made payment to Appraiser, City shall be entitled to withhold payment to Appraiser to the extent necessary to protect City.
- 4.3 Appraiser 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 Appraiser.
- 4.4 Appraiser may submit a request for Partial Compensation, prior to a Task Order's completion. A request for Partial Compensation shall 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 Director or his/her designee and at City's sole discretion. Compensation also may be made based solely on the tasks and services completed.
- 4.5 Project/Task Order Close Out and Final Payment:
 - 4.5.1 Appraiser's final billings shall indicate: "Final Bill - No Additional Compensation is Due to Appraiser" on the final invoice
 - 4.5.2 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Appraiser is responsible due to:
 - 4.5.2.1 delays in the performance of Appraiser's Work;
 - 4.5.2.2 third-party claims filed, or reasonable evidence received indicating a probable filing of such claims, unless security acceptable to City is provided by Appraiser;
 - 4.5.2.3 failure of Appraiser to make payments properly to Sub-Consultants, suppliers and/or vendors for supplied services, labor, materials or equipment;

4.5.2.4 reasonable evidence that Appraiser's Work cannot be completed for the unpaid balance amount under an assigned Task Order and this Agreement;

4.5.2.5 damage to City; or

4.5.2.6 persistent failure by Appraiser to carry out the performance of its services in accordance with this Agreement

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

4.5.3.1 In the event of any dispute(s) between the parties, regarding the amount properly compensable for any Phase, as final compensation or regarding any amount that may be withheld by City, Appraiser 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 claim. In the event Appraiser does not initiate and follow the claim procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Appraiser.

4.5.3.2 City shall make final compensation of all sums due Appraiser not later than thirty (30) days after Appraiser's execution and delivery of a mathematically correct and accepted final Pay Application.

4.5.3.3 Acceptance of final compensation by Appraiser shall constitute a waiver of all claims except those previously made in writing and identified by Appraiser as unsettled at the time of Appraiser's submittal of its final application for compensation.

4.5.3.4 Appraiser agrees to maintain adequate books, payrolls and records in forms deemed satisfactory to City in connection with any and all Services performed hereunder. Appraiser 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, unless a dispute regarding the Project or Appraiser's Work is ongoing. If any dispute exists, upon notice from City, Appraiser shall retain its books, payrolls and records for more than four (4) years after completion of all Services performed herein and for as long after four (4) years as City may request. At all reasonable times, Appraiser shall provide access to City and City's duly authorized representatives to all personnel of Appraiser, as well as all books, payrolls and records of Appraiser and City shall have the right to audit same.

4.6 City administers its services through PRIMELink. Appraiser shall conduct its communication with City through PRIMELink and Appraiser shall perform all project-related functions utilizing PRIMELink. Communications shall include correspondence, submittals, requests for information, vouchers, compensation requests and processing, amendment, task 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 Appraiser's invoices shall be submitted through PRIMELink.

5 Time and Period of Service

5.1 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 two (2) years, herein referred to as the "Initial Term".

- 5.2 As the enabling Ordinance provides, City shall retain an option to extend this Agreement for three (3) additional one-year periods (Extension Period(s)). The Director shall have the authority to exercise such options at his/her discretion.
- 5.3 Time is of the essence of this Agreement. Appraiser shall perform and complete its obligations for the various Tasks of services under **Article II** Scope of Services herein in a prompt and continuous manner so as to not delay the work for a Project in accordance with the schedules approved by City. If, upon review of a Task Order, corrections, modifications, alterations and/or additions are required of Appraiser for providing its services, those items shall be completed by Appraiser before that Task Order is approved.
- 5.4 Appraiser shall not proceed with the next appropriate Task Order without a written authorization from City. City may elect to discontinue Appraiser's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City retains the right to make adjustments to the scope of Appraiser's Task Order obligations at any time to achieve the required services.
- 5.5 Appraiser 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 Appraiser's reasonable control. Within twenty-one (21) days from the occurrence of any such event, for which time for performance by Appraiser shall significantly be extended under this Section 5.5, Appraiser shall give written notice thereof to City stating the reason for such time extension and the actual or estimated time for completion thereof. If City determines Appraiser is responsible for Appraiser's need for an extension of time, City shall have the right to make a Claim as provided in this Agreement.
- 5.6 This Agreement with Appraiser shall remain in force for a period of time City determines reasonably may be required for the appraisal services and the completion of a Project, including any extra work and any required extensions thereto, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

6 Record Retention

- 6.1 Appraiser accurately and completely shall maintain all documents, papers and records, whether paper, digital or otherwise, used or generated in the course of performing this Agreement (Documents). Documents specifically include all survey-related documents. Appraiser shall make the Documents available to City at Appraiser's offices during normal City business hours as often as City may deem necessary throughout the period of performance and the Retention Period of this Agreement. City may audit, inspect, examine and make excerpts and/or copies of the Documents.
- 6.2 Appraiser shall retain all Documents for five (5) years after expiration of the term of this Agreement, including any renewal terms exercised (the Retention Period). If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning the Documents or the services provided by Appraiser hereunder, Appraiser shall retain the records until resolution of the litigation or other questions. City may require Appraiser to deliver the Documents to City before or at the end of the Retention Period.
- 6.3 Except in the ordinary course of business, Appraiser shall not reveal the results of any appraisal assignments to any third party, except under legal process. In case of legal process, Appraiser shall notify City immediately, so City has the opportunity to assert any proprietary or other privileged interest it may have in the Appraisals.
- 6.4 Appraiser shall impose on its Consultants, Sub-Consultants, Contractors and Subcontractors, if any, all Record Retention obligations of this Agreement.

7 Ownership of Documents

All Documents are the exclusive property of City. Appraiser has no copyright or other proprietary claim to the Documents. As exclusive owner, City maintains the right to use all Documents as it desires, without restriction.

8 Remedies of Default

8.1 The following shall be Events of Default by Appraiser, for which Appraiser has the notice cure rights set forth in **Section 9. Remedies for Default** herein:

- a. Failure to comply with City's Disadvantage Business Enterprise Program (DBE) Ordinance Compliance and Provisions outlined in this Agreement, as solely determined by City.
- b. Bankruptcy of Appraiser or of one or more of Appraiser's three highest-paid employees.
- c. Failure to perform any obligation of Appraiser under this Agreement.
- d. Unsatisfactory performance, as solely determined by City.

9 Remedies for Default

9.1 If Appraiser commits an event of default, as outlined in Section 8. Events of Default herein, City may deliver written notice specifying the default. In such case, Appraiser has fifteen (15) calendar days to cure the cited default. If Appraiser fails timely to cure the cited default, City may, without further notice, terminate this Agreement in whole or in part, as City deems appropriate, and contract with another appraiser to complete the work required in this Agreement. City also may offset the cost of securing alternative appraisal services, including the cost of any solicitation, against Appraiser's future or unpaid invoice(s) for compensation under this Agreement.

9.2 City's termination of this Agreement is not an election of remedies. A termination of this Agreement does not limit City's right to seek damages from or otherwise pursue Appraiser for any default. All remedies are cumulative.

10 Other Termination

10.1 City may terminate this Agreement without Appraiser being given an opportunity to cure if Appraiser sells, transfers, pledges, conveys or assigns this Agreement without prior written approval.

10.2 City may terminate this Agreement without Appraiser being given an opportunity to cure if Appraiser becomes subject to voluntary or involuntary proceedings under the Bankruptcy Code, enters into a composition with its creditor or sells substantially all of its assets.

10.3 City may terminate this Agreement without Appraiser being given an opportunity to cure if any state or federal law or regulation is enacted or promulgated prohibiting the performance by Appraiser of any of the duties herein or if any law is interpreted to prohibit such performance.

10.4 City may terminate this Agreement without cause, without Appraiser being given an opportunity to cure and without additional compensation to Appraiser by giving thirty (30) days written notice to Appraiser. Appraiser may terminate this Agreement without cause and without liability to City by giving ninety (90) days written notice to City. No such termination impairs Appraiser's rights to compensation under this Agreement due before the expiration of the 30-day notice period.

10.5 If any applicable law, rule or regulation is enacted or promulgated prohibiting performance of any of the duties of this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement automatically terminates as of the effective date of such prohibition.

11 Post-Termination Procedures

11.1 Regardless how this Agreement is terminated, if requested by City, Appraiser shall transfer to City or to such person(s) or firm(s) as the City may designate, in an orderly manner at no additional cost to City, all completed or partially completed Appraisals. Appraiser shall complete the transfer(s) within thirty (30) calendar days of City's written request. The transfer(s) shall be at Appraiser's sole cost and expense. City's payment to Appraiser is conditioned on Appraiser's timely compliance with City's Document transfer(s) request(s).

11.2 Upon receipt of notice to terminate this Agreement, Appraiser shall cease all operations of work being performed by Appraiser, or any of Appraiser's Consultants, Sub-Consultants, Contractors and/or Subcontractors and Appraiser shall cancel, withdraw or otherwise terminate any and all activities undertaken pursuant to this Agreement. City shall not be liable to Appraiser nor Appraiser's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of this Agreement's termination, unless otherwise provided herein.

11.3 If, at the time of this Agreement's termination, a Task Order under this Agreement is pending, then Appraiser's entitlement to compensation under this Agreement continues.

11.4 Within thirty (30) days after the expiration or termination of this Agreement, Appraiser may submit to City its claims, in detail, for the monies if feels it is owed by City for services performed and payable under this Agreement up through the date of expiration or termination of this Agreement. Failure by Appraiser to submit its claims within thirty (30) days negates City's liability for paying compensation to Appraiser and waives Appraiser's claims for unpaid compensation under this Agreement.

12 Insurance

Before beginning work, Appraiser shall acquire the insurance coverages specified on **Exhibit B** Required Insurance, attached hereto and incorporated herein by reference.

13 Indemnity

13.1 APPRAISER SHALL FULLY INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY 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 AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY APPRAISER OR ITS AGENT, APPRAISER UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH APPRAISER 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 APPRAISER AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

13.2 The provisions of this Article 13 Indemnity 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. Appraiser shall advise City in writing within twenty-four (24) hours of any claim or demand against City or Appraiser known to Appraiser related to or arising out of Appraiser's activities under this Agreement.

14 Assignment and Subcontracting

14.1 Appraiser shall supply all personnel necessary to complete the work under this Agreement. Persons working for and with Appraiser, pursuant to this Agreement, shall be either employees, Consultants, Sub-Consultants, Contractors and/or Subcontractors of Appraiser.

14.2 Appraiser only may utilize the Consultants, Sub-Consultants, Contractors and Subcontractors identified on **Exhibit D**, attached hereto and incorporated herein by reference. Deviation from this Sub-Consultant/Subcontractor list, whether deletions, additions or substitutions, must be approved in writing by Director or his/her designee before any new Sub-Consultant and/or Subcontractor may perform work under this Agreement

14.3 Appraiser shall have written Agreements with all of its Consultants, Sub-Consultants, Contractors and Subcontractors. City shall not be obligated to any Consultants, Sub-Consultant, Contractors or Subcontractor of Appraiser or any other person not a party to this Agreement for performance of services or the payment of fees. References in this Agreement to assignee, transferee, Consultant, Sub-Consultant, Contractor and/or Subcontractor indicate only those such entities approved in writing by City.

14.4 Except as otherwise provided herein, Appraiser shall not sell, assign, pledge, transfer or convey any interest in this Agreement or delegate the performance of any duties hereunder without the written consent of City. Even if written consent by City is given, Appraiser remains liable for completion of the services required under this Agreement

14.5 Any attempt to transfer, pledge or otherwise assign this Agreement or any part thereof without City's written approval, is void ab initio and confers no rights.

15 Independent Appraiser

Appraiser is an Independent Contractor and not an officer, agent, servant or employee of City. Appraiser has the exclusive control of and the exclusive right to control the details of the work performed hereunder and all persons performing it. Appraiser is responsible for the acts and omissions of its officers, agents, employees, Consultants, Sub-Consultants, Contractors, and Subcontractors. The doctrine of respondeat superior does not apply as between City and Appraiser or those working for or under Appraiser. Nothing in this Agreement creates a relationship of employer-employee, principal-agent, partnership or joint venture between City and Appraiser. City is not and shall not be liable for injury to others arising from or relating to acts of omissions of Appraiser or those acting under Appraiser under this Agreement. Appraiser cannot and shall not bind City.

16 Prohibited Interests in Contracts.

16.1 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.

16.2 Appraiser acknowledges it is informed of and will comply with 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. Appraiser'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.

16.3 Appraiser warrants, certifies and this Agreement is made on City's reliance thereon Appraiser, 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.

17 Licenses and Certifications

Appraiser warrants and certifies it, its employees and its Consultants, Sub- Consultants, Contractors and Subcontractors:

- (A) have the requisite training, licenses, and certifications to provide the services required hereunder, and
- (B) meet all competence standards promulgated by all regulatory bodies relevant to the work to be performed hereunder.

18 Agency Relationship

18.1 Appraiser exclusively shall represent City in all transactions relating to assigned Projects, unless City authorizes Agent in writing to act as an intermediary as to a particular transaction, as the term "intermediary" is defined in Texas Occupations Code Chapter 1103. City's consent to Appraiser acting as an intermediary does not entitle Appraiser to do so in a manner prohibited by Texas Occupations Code Chapter 1103 and is not a defense to a claim brought against Appraiser by City, based on violation of that Chapter.

18.2 If City consents to Appraiser acting as an intermediary, Appraiser shall, under all circumstances, provide City with another Appraiser to represent only City in the transaction. If Appraiser cannot provide another Appraiser to represent City, Appraiser shall refuse; the Task Order.

19 Compliance.

Appraiser shall comply with all applicable federal, state, and local laws, rules, and regulations in the course of the work required hereunder.

20 Non-Discrimination Policy

20.1 Non-Discrimination. As a party to a contract with City, Appraiser 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. Appraiser represents and warrants 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, Appraiser 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 Appraiser

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. Appraiser acknowledges it understands and agrees 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 Appraiser from participating in City contracts, or other sanctions. This Section 20.01 is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Appraiser'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.

20.2 Sub-Consultants. Upon execution of this Agreement by Appraiser, Appraiser shall provide City a detailed City of San Antonio Subcontractor/Supplier Utilization form for approval by City, including Appraiser's list of Consultants, Sub- Consultants, Contractors and Subcontractors and shall require all of its Consultants, Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's web site. Appraiser shall obtain approval in writing from City prior to adding, substituting or deleting any listed and approved Consultant, Sub- Consultant, Contractor and/or Subcontractor from an accepted Task Order.

21 Authority to Bind

The person who signs on behalf of Appraiser individually represents and warrants that he/she has full legal authority to execute this Agreement on behalf of Appraiser and to bind Appraiser to the terms and conditions of this Agreement.

22 Appropriations

All obligations of City under this Agreement are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. Exceptions are those obligations that include Disadvantaged Business Enterprises (DBE) requirements. City may terminate this Agreement and have no further liability.

23 Dispute Resolution

23.1 Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below, the Parties hereto first shall submit in good faith to mediation. The Parties may not assert limitations, laches, waiver and/or estoppels, based upon attempts to mediate.

23.2 Filing suit on a claim that should be mediated hereunder waives the filing Party's right to demand mediation. But one Party's waiver does not affect another Party's rights under this Agreement. A defending Party does not waive mediation for so long as, within a reasonable time after appearing, the defending Party gives written notice to the plaintiff Party or its counsel of its intent to require compliance with this Section 23.

23.3 Mediation shall be conducted in San Antonio, Bexar County, Texas.

23.4 The Party desiring relief has the burden to initiate mediation. Waiting for another Party to initiate mediation does not waive the right to mediation.

23.5 If the Parties can otherwise agree on a mediator, they may do so. Alternatively, either Party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether:

- (A) the copy of the Agreement before the court is authentic;
- (B) the Agreement duly was signed and delivered by all Parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

23.6 Mediator fees shall be borne equally by the Parties.

23.7 The Parties need not mediate before going to court for either Party to seek emergency injunctive.

24 Miscellaneous

24.1 **Applicable Law** - This Agreement is entered into in San Antonio, Bexar County, and State of Texas. Appraiser accepts and agrees the construction of this Agreement and the rights, remedies and obligations arising hereunder are governed by the laws of The State of Texas. Note the Texas Conflicts of Law rules shall not be used to cause the application of the laws of a jurisdiction other than Texas. Both Parties' obligations hereunder are performable in San Antonio, Bexar County, Texas.

24.2 **Severability** - If any Article or Section of this Agreement is determined to be invalid or unenforceable, said invalid or unenforceable Article and/or Section shall be deemed to not be a part of this Agreement and said determination shall not affect the remaining valid and enforceable Articles and Sections of this Agreement.

24.3 **Successors** - This Agreement inures to the benefit of and is binding on the heirs, representatives, successors and permitted assigns of each Party. This clause does not authorize any assignment not otherwise authorized herein.

24.4 **Integration** - This written Agreement represents the final Agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties. Both City and Appraiser attest there are no oral agreements between the Parties.

24.5 **Modification** - This Agreement only may be changed by a written Agreement, signed by both Parties against whom enforcement of any modification is sought. City may be bound to a modification by the Director's signature, except that any modification of the Fee to Appraiser causing the not to-exceed total amount paid to Appraiser hereunder to exceed SEVENTY FOUR THOUSAND DOLLARS and no/100 (\$74,000.00) shall be approved by ordinance of the San Antonio City Council.

24.6 **Third Party Beneficiaries** - This Agreement is intended for the benefit of the Parties hereto and their successors and permitted assigns only. It has no third-party beneficiaries.

24.7 **Notices** - Any notice provided for or permitted hereunder shall be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth below. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Notice other than by certified mail, return receipt requested, is effective only on actual receipt. Address for notice may be changed by giving notice hereunder. The initial address for notice to Appraiser is Appraiser's Address specified at the beginning of this Agreement. The initial address for notice to City is:

Real Estate Manager
Public Works Real Estate Division
City of San Antonio
P.O. Box 839966

San Antonio, Texas 78283-3966

With a copy to:
Director
Public Works Department City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

24.8 **Pronouns** - In construing this Agreement, plural constructions include the singular and singular constructions include the plural. No significance shall be attached to whether a pronoun is masculine, feminine or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

24.9 **Captions** Paragraph titles and captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

24.10 **Counterparts** - This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, whether or not all Parties sign the same document. Regardless of their number, the counterparts constitute only one Agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

24.11 **Incorporation of Exhibits** - Each Exhibit referenced in this Agreement is incorporated herein by reference for all purposes as if it were fully set forth.

24.12 **Further Assurances** - The Parties shall execute and deliver such additional documents and instruments as may be required to affect fully the provisions hereof. No such additional document(s), however, can alter the rights or obligations of the Parties as contained in this Agreement.

24.13 **Administrative Agreements** - The Director may, without further San Antonio City Council action, agree to, sign and deliver on behalf of the City all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and may declare defaults and pursue remedies for such defaults.

25 **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.

26 Public Information

Appraiser acknowledges this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this _____ day of _____, 2021.

CITY OF SAN ANTONIO

FIRM NAME
D/B/A FIRM NAME

NAME: _____
TITLE: _____

By: _____
Name: **Contractor Name**
Title: **Contractor Title**

Approved as to Form:

City Attorney

EXHIBIT A:

Scope of Work

The Appraiser shall be required to provide on-call appraisal services on all types of real estate property in conformance with the following:

1. Appraisal services must comply with all provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) and the USPAP Competency Rule, as well as all provisions of local, state and federal laws, ordinances and regulations.
2. Appraiser must be licensed or certified in accordance with the Texas Appraiser Licensing and Certification Act, Occupation Code, Title 7 - Practices and Professions Related to Real Property and Housing, Subtitle A - Professions Related to Real Estate, Chapter 1103 - Real Estate Appraisers amended September 1, 2005.
3. Appraiser shall maintain a sufficient level of staff by job type to services City requirements, to include but not be limited to: professional (e.g. attorneys, engineers); managerial, administrative and clerical.
4. Appraiser shall designate a single point of contact within Respondents organization to which City can look for timely resolution of any issues which arise related to Appraiser's work in performance of assigned projects.
5. Appraiser shall meet with City periodically, as agreed to by City and Appraiser, subject to change and dependent upon the number and type of open projects assigned, to address concerns or issues, if any, and to review status of assigned projects.
6. Appraiser shall accept no assigned Task Orders for which Appraiser's principal(s) and/or employees, either directly or indirectly, have any financial or personal interest in any tract or parcel of land included within the scope of the Task Order requiring title services.
7. Appraiser shall accept all assigned Task Orders for City, regardless of size or value of property concerned, and provide expeditious service to meet City requirements and timelines.
8. Appraiser shall provide City electronic and hard copy documents disclosing fully the services rendered pursuant to an assigned Task Order.
9. Appraiser shall provide City assistance on general requests, such as for affidavit forms, clarifications on commitments, etc.
10. Appraiser shall provide bilingual services, as may be required by City on any issued Task Order.

Assignment of Work

From the list of awarded Appraisers, City shall designate, assign and advise a selected Appraiser when appraisal services are needed. Upon designation, City shall issue Respondent a Task Order request through *PRIMELink*, fully outlining and describing the services requested by City. (Note all awarded Appraisers shall be required to obtain access and attend training on *PRIMELink*, as *PRIMELink* is utilized by PWD to process payment applications and all project-related correspondences and submittals.)

1. Upon acceptance of the Task Order request, the selected Appraiser shall submit a written cost estimate to City, which shall include the number of hours required to complete the requested work, as well as the delivery date for the appraisal report.
2. Authorization to proceed shall be provided in form of a Task Order issued by City to Appraiser. The Task Order shall detail the type of appraisal services required and a specific property description, as well as the required date for receiving finalized appraisal.
3. Upon receipt of City's Task Order, the Appraiser fully shall inspect the assigned property, including all improvements, fixtures, structures, appurtenances and all other elements of value.
4. Appraiser shall be responsible for ensuring that any and all items lying within the proposed property have been identified. Improvements and cost to cure items, such as fences, walls, signs, landscaping, drywells, backflow devices, etc., shall be addressed in the appraisal report.
5. Appraiser's written report to City shall include, but not limited to:
 - a. factual information pertinent to the subject property;
 - b. prevailing trends affecting value;
 - c. analytical reasoning used in determining the subject property's highest and best use; and
 - d. support of a value conclusion.
6. Appraiser(s) shall prepare appraisal documentation utilizing the following forms:
 - a. Standard Freddie Mac Form 70,
 - b. Fannie Mae Form I 004, or a
 - c. Summary Appraisal report.
7. Appraiser's finalized appraisal reports shall be submitted to City within twenty-one (21) calendar days from the date directed to proceed, unless otherwise noted on the issued Task Order.
8. Appraiser's finalized appraisal report shall be submitted to City in an electronic PDF format plus hard copies, as outlined in the issued Task Order.
9. Appraiser shall correct all incomplete, inaccurate or defective work within such time specified by City at no additional cost to City.
10. Appraiser also may also be required to prepare documentation and testify in hearings during Eminent Domain proceedings and/or in jury trials on behalf of City when cases are appealed.
11. Task Order assignments shall be made at City's sole discretion; further, City shall not guarantee that Appraiser shall receive a particular volume or minimum number of assignments.
12. City may utilize appraisal services **outside** of said contract, when deemed in the best interest of City and approved by the Director of PWD or his/her authorized designee. Examples when an outside appraiser may be used **are**:
 - Appraiser(s) are unable to meet City's timeline requirement for specific Tasks;
 - A third party involved in a specific acquisition requires a particular type of appraiser that is not on City's approved list; or
 - The appraisal service is to be included as a negotiated term item for a sales agreement.

EXHIBIT B:

Insurance Requirements

Prior to the commencement of any work under this Agreement, Appraiser shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's PWD/Contract Services Department, which clearly shall be labeled "ON-CALL REAL ESTATE APPRAISAL SERVICES" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent, accompanied by an affidavit also signed by Appraiser, attesting the furnished Certificate(s) represent Appraiser's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and phone number. The certificate(s) shall 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 Public Works Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this Exhibit B 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 shall City allow modification whereby City may incur increased risk.

Appraiser's financial integrity is of interest to City; therefore, subject to Appraiser's obligation to maintain reasonable deductibles in such amounts as are approved by Appraiser's insurance companies, Appraiser shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof at Appraiser'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. If a project does not justify these standard limits of insurance coverages, Appraiser may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

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

Appraiser agrees to require, by written contract, all Consultants, Sub-Consultants, Contractors and/or Subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Appraiser herein, and provide to Appraiser a certificate of insurance and endorsement naming Broker and City as additional insureds. Policy limits of the coverages carried by Consultants, Sub-Consultants, Contractors and Subcontractors shall be determined as a business decision of Broker. Broker shall provide City with said certificate and endorsement prior to the commencement of any work by any Consultants, Sub-Consultant, Contractors and/or Subcontractor and through the period referenced in herein. 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.

As they apply to the limits required by City, if City requests a copy/copies of an insurance policy, declaration page and all required endorsements, City shall be entitled, without expense, to receive copies of the policies, declaration page and all endorsements. Appraiser shall pay all costs incurred as a result of the provision of said documents to City.

Appraiser shall mark those portions of the policy, if any, Appraiser regards as confidential. In the event a third party makes and Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Appraiser's policy, City shall submit the received request, along with Appraiser's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Appraiser's policy information. Appraiser and City agree City shall be bound by the AG opinion/decision. Similarly, Appraiser agrees and accepts City shall provide all Appraiser information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Appraiser's information.

Appraiser 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:

- 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;
- Provide for an endorsement 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and
- Where allowed by respective policy provisions, terms and conditions, provide advance written notice to City of any suspension or non-renewal in coverage, any change in policy limits by endorsement and not less than ten (10) Calendar days advance notice for nonpayment of premium.
- All correspondences regarding Appraiser's Insurance requirements shall be sent to:

City of San Antonio Attn: Public Works Department - Contract Services
P.O. Box 839966
San Antonio, Texas 78283-3966

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

In addition to any other remedies City may have upon Appraiser'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 Appraiser's to stop work hereunder until Appraiser demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Appraiser may be held responsible for payments of damages to persons or property resulting from Appraiser's or its Consultants', Sub-Consultants', Contractors' and/or Subcontractors' performance of the work covered under this Agreement.

It is agreed Appraiser'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.

It is understood and agreed 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.

Appraiser and any Consultants, Sub-Consultants, Contractors and/or Subcontractors are responsible for all damage to their own equipment and/or property.

EXHIBIT D:

DBE Program Provisions

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The City of San Antonio Public Works Department has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the Texas Department of Transportation (DOT). The objective of the DBE program is to ensure that the Public Works Department complies with 49 CFR Part 26, and to remedy past and current discrimination against disadvantaged businesses. The program ensures a “level playing field” and fosters equal opportunity in all Texas Department of Transportation and Federal Highway Association assisted contracts that include highway and street construction.

The policy of the Public Works Disadvantaged Business Enterprise program is:

To ensure non-discrimination in the award and administration of DOT assisted and locally funded contracts

To create a level playing field on which DBEs can compete fairly for DOT assisted and locally funded contracts

To ensure that the DBE program is narrowly tailored in accordance with the applicable law

To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs

To help remove barriers to the participation of DBEs in DOT assisted and locally funded contracts

To assist the development of firms that can compete successfully in the marketplace outside the DBE program

DBE OBLIGATION

The Public Works Department and/or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the Public Works Department and its contractors shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of TXDOT-assisted contracts.

THE DBE GOAL FOR THIS PROJECT IS 8.5%

DEFINITIONS

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or*
 - (ii) A third party or parties controls or has the power to control both; or*
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.**
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.*

Commercially Useful Function—a DBE is considered to perform a commercially useful function when it:

- (1) *Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,*
- (2) *Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.*

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantage business enterprise or DBE means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Good faith efforts mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

CERTIFICATION

1. A contractor/bidder/proposer shall submit to the City a copy of the DBE Certification Affidavit, for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers in the performance of work.
2. The Certification Affidavit must be from a firm that has been certified by one of the five (5) certifying agencies of the Texas Unified Certification Program (TUCP). The five agencies are: Texas Department of Transportation (TxDot), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.

3. A firm must be certified on or before the bid/proposal due date in order for the firm's proposed work on the particular contract to be credited toward the DBE goal. It is not enough for a certification application to have been submitted by the deadline.

COUNTING JOINT VENTURES

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, (provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

- a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
- b. Corporate resolutions or other documents authorizing the firms to enter the Joint Venture.
- c. A description of the work to be performed by all the Joint Venture Partners.
- d. Proof of current certification status of the individual DBE venture partners.

GOOD FAITH EFFORTS

The bidder/proposer shall demonstrate, to the satisfaction of the DBE Liaison that genuine efforts have been made to achieve the DBE goal. The requirements for demonstrating "good faith efforts" are set forth as follows:

1. Written notices to DBEs contacted by the bidder/proposer for specific scopes of work identified by the bidder/proposer for subcontracting opportunities not less than five (5) business days prior to bid due date. Such notices shall include information on the plans, specifications and scope of work, including the deadline for submission of interest in teaming;
2. Attendance at a pre-bid conference, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals.
4. For those DBES responding affirmatively in writing to the notice required by Item 1 above,
 - (a) reasons why agreements were not reached, including written explanation for rejection of bids;
 - (b) if additional elements of work have been identified by the bidder/proposer as available for subcontracting, the bidder/proposer shall contact the Public Works Department DBE Liaison to ascertain the availability of DBE firms in those areas.
5. Efforts to assist DBE contractors with bonding, insurance, and financing, where appropriate.
6. Seeking the assistance of the Public Works DBE Liaison in contacting DBEs.
7. A bidder/proposer shall commit to the minimum percentage of DBE utilization as submitted with its bid/proposal on this contract. During the term of this contract, any unjustified failure to comply with the level of DBE participation identified in the bid/proposal shall be considered a material breach of contract.
8. If the bidder/proposer is a certified DBE and the DBE bidder/proposer intends to perform a portion of the work with its own work force, the DBE bidder/proposer must identify the work specifically by type and dollar value and must perform the work indicated with its own work forces in order to have that work counted toward the goal. (Even though the bidder/proposer is a certified DBE does not relieve the DBE bidder/proposer of the responsibility to make good faith efforts.)
9. In addition, all bidders/proposers will be required to submit the following information with the bid:
 - (a) The names and addresses of DBE firms that will participate in the contract;
 - (b) A description of the work that each DBE will perform

- (c) The dollar amount of the participation of each DBE firm participating
- (d) Written documentation of the bidder's/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- (e) Written confirmation from the DBE that it is participating in the contract as provided in the bidder's/proposer's commitment.

EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a bidder/proposer will be evaluated by the DBE Liaison to determine whether the efforts to obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions, which the DBE Liaison may consider as part of the bidder's/proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate "Good Faith Efforts" are as follows:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a) Negotiating in good faith with interested DBEs. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(b) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a prime contractor failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the prime contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. In determining whether a bidder/proposer has made good faith efforts, the DBE Liaison may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other bidders, the DBE Liaison may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

RECONSIDERATION MECHANISM

The Public Works Department DBE Liaison will evaluate the "good faith efforts" of a firm. If after reviewing the good faith efforts submitted by Bidder/Proposer, the DBE Liaison determines that the Bidder/Proposer has failed to adequately document its good faith efforts, then the Bidder/Proposer shall have the opportunity to provide written documentation or argument, to the Public Works Director, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Proposer will have the opportunity to meet in person with the Public Works Director to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Public Works Director will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the Public Works Director.

The Public Works Director may determine that the efforts of the Bidder/Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City. However, if the Public Works Director determines that the Bidder/Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Texas Department of Transportation

COMPLIANCE

If a bidder/proposer is awarded a contract:

1. The bidder/proposer must not terminate for convenience a DBE subcontractor (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the City's prior written consent. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the bidder/proposer must notify the City immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.
2. The Bidder/Proposer will be required to make good faith efforts to find another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the City has established for this contract. The Bidder/Proposer will be required to obtain the DBE Liaison's prior

approval of the substitute DBE, through the submittal of Change of Subcontractors/Suppliers and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the Bidder/Proposer fails or refuses to comply in the time specified, our office may issue a termination for default.

PROMPT PAYMENT

The Prime Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its subcontract **no later than 10 days** from the date that the prime contractor has been paid by the City for invoices submitted for performance of subcontractor's work. A delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of San Antonio. This clause applies to both DBE and non-DBE subcontractors.

To Apply for DBE Certification, please contact the South Central Texas Regional Certification Agency (SCTRCA) at (210) 227-4722 or www.sctrca.org

For additional information contact Courtney McClure, Public Works DBE Coordinator, (210) 207-4633.