

**AGREEMENT BETWEEN THE CITY OF SAN ANTONIO
AND
WSP USA INC.
FOR
CLIMATE ACTION PLANNING SERVICES (RFP 24-013; RFx 6100017502)**

**STATE OF TEXAS §
 §
COUNTY OF BEXAR §**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter, “City”), acting through the Director, Office of Sustainability (hereinafter “Director”), and WSP USA Inc., One Penn Plaza, 4th Floor, 250 W 34th Street, New York, New York, 10119 (hereinafter, “WSP” or “Consultant”), both of which may be referred to herein collectively as the “Parties”. Said Agreement being executed by Alice Lovegrove, SVP, ENV SP, Project Manager, National Sustainability Lead, and pursuant to Ordinance No. _____, passed and approved by the City Council on March 21, 2024. Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, Request for Proposals for Climate Action Planning Services for the City of San Antonio (RFP 24-013; RFx 6100017502), issued by the City on October 20, 2023;
2. Exhibit II, Addendum I dated November 7, 2023;
3. Exhibit III, Addendum II dated November 20, 2023;
4. Exhibit VI, Compensation Schedule, submitted by WSP in response to the RFP as RFP Attachment B;
5. Exhibit V, Copy of enabling Ordinance No. 2024-03-__-__.

Referenced Documents: Further, WSP’s responses to the RFP and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement. Any conflicts between the terms of this Agreement and any of the exhibits or the referenced documents will be resolved in favor of this Agreement.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described in the Scope of Service and Budget of this Agreement (hereinafter, (Project”).

I. TERM

1.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon the execution of this Agreement as set out below and terminate on December 31, 2025. At the sole option of the City, this Agreement may be

extended for no more than one (1) additional one-year period.

1.2 Notwithstanding any other provisions of the Agreement, and in order to satisfy the requirements of the Constitution of the State of Texas, all covenants and commitments of City contained herein which would require the expenditure of funds by City are subject to and contingent upon the annual appropriation process of the City of San Antonio's City Council. In the event City fails to appropriate sufficient funds dedicated to funding any such obligation of City, such a failure shall not be considered a default or breach of this Agreement.

II. SCOPE OF SERVICES AND BUDGET

2.1 The Scope of Services and Budget is attached hereto and incorporated as if thoroughly laid out for all intents and purposes as **Exhibit "VI"**.

2.2 Consultant agrees to provide the services described in **Exhibit "VI"**, "Scope of Services and Budget", in exchange for the compensation described in Article **III. COMPENSATION TO CONSULTANT**.

2.3 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. 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 **VI. 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, as stated herein, even should City elect not to terminate.

III. COMPENSATION TO CONSULTANT

3.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed **Six Hundred and Twenty-Five Thousand, Six Hundred and Fifty-Four Dollars and 84/100 (\$625,654.84)** It is understood that the amount paid under this **Section 3.1** shall be the maximum amount to be paid to Consultant by City. Consultant will be paid for the actual work performed on the project which may be less than the above amount. Consultant shall be solely responsible for all other funding associated with the Project.

3.2 City reserves the right to remit final payment only after the completion of all deliverables as set forth in **Exhibit "VI"** have been met to the satisfaction of the Director or his/her designee. Invoices shall be submitted in a form acceptable to City, which shall be paid within 30 days of receipt and approval by Director or his/her designee. Invoices shall be submitted to: City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976.

3.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable to Consultant 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 3.1** above. Total payments to Consultant cannot exceed that amount set forth in **Section 3.1** above, without prior approval and agreement of all parties, including, if necessary, the City of San Antonio's City Council, evidenced in writing or by adoption of ordinance.

3.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following 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.

IV. OWNERSHIP OF DOCUMENTS

4.1 Any pre-existing intellectual property owned by either party shall remain the property of that party and the other party shall obtain no ownership rights therein.

- "Deliverables" means any and all writings, documents or information in whatsoever form and character that Consultant creates specifically for City and delivers to City 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.
- "Consultant Work Product" means any materials and any intellectual property rights embodied therein that Consultant utilizes or otherwise relies upon in the course of providing Services to City hereunder.

4.2 City shall have exclusive ownership of the Deliverables, including exclusive ownership of any intellectual property thereto and of any inventions, discoveries, improvements, embodied therein and exclusive of the ideas, techniques, and/or know how.

4.3 Consultant understands and acknowledges that as the exclusive owner of any and all such Deliverables, City has the right to use all such writings, documents and information as City desires, without restriction. Consultant shall have exclusive ownership of the Consultant Work Product, including exclusive ownership of any copyright thereto and of any inventions, discoveries, improvements, ideas, techniques, and/or know how embodied therein.

4.4 Consultant grants to City, subject to receipt of payment by City and the other terms and conditions of this Agreement, a non-exclusive, perpetual, non-transferable right to license and use such Consultant Work Product solely for City's internal use purposes. This license shall include the right to use, prepare derivative works based upon for internal use, and copy and distribute internally only and not to third parties, such Consultant Work Product. Any subsequent use of Consultant Work Product for purposes other than originally intended shall be at the sole risk of the City.

4.5 Without limiting Consultant's ownership rights in the Consultant Work Product, Consultant hereby expressly retains the right to use and provide to third parties in the course of

its business copies or portions of the Consultant Work Product or works derived from the Consultant Work Product, exclusive of any confidential or proprietary information of City. Consultant shall not be precluded in any way from using any generalized knowledge or expertise that WSP acquires during the performance of the Services.

4.6 In accordance with Texas law, Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are 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 behalf of Consultant pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Consultant, except as otherwise set forth herein. **Any intellectual property rights associated with the Deliverables developed under this agreement shall be the property of City, and Consultant shall execute any documents necessary to assign said intellectual property rights to City. Consultant further agrees that any tool or work product developed under this agreement shall be a work-for-hire as defined in Title 17 USC Section 201 and any copyright shall be the property of City.**

4.7 The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

V. RECORDS RETENTION

5.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

5.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

5.3 Consultant shall notify City, immediately, in the event Consultant receives any

requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VI. TERMINATION

6.1 For purposes of this Agreement, “termination” of this Agreement shall mean termination by expiration of the Agreement term as stated in Article **I. Term**, or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause. This Agreement may be terminated by either party upon written notice, which notice shall be provided in accordance with Article **VII. Notice**.

6.3 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:

6.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article **XI. Assignment and Subcontracting**.

6.3.2 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

6.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated below, same shall be considered an event of default.

6.4.1 Bankruptcy or selling substantially all of company’s assets.

6.4.2 Failing to perform or failing to comply with any covenant herein required.

6.4.3 Performing unsatisfactorily as determined by the Director.

City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have two (2) calendar days after receipt of the written notice, in accordance with Article **VII. Notice**, to cure such default. If Consultant fails to cure the default within such two (2) 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 entity 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 entity against Consultant’s future or unpaid invoice(s) on this Agreement, subject to the duty on the part of City to mitigate its losses to the extent required by law.

6.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with **Article V. 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.

6.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

6.8 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.

6.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VII. NOTICE

7.1 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: Douglas Melnick
Chief Sustainability Officer
Office of Sustainability
100 W. Houston Street, 7th Floor

San Antonio, Texas 78205

If intended for Consultant, to:

WSP USA Inc.
Attn: Alice Lovegrove, ENV SP
One Penn Plaza
250 W 34th Street
New York, NY 10119

VIII. CITY'S RIGHT TO AUDIT

8.1 The City reserves the right to conduct or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City during the performance period. The City may engage a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, to perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, Consultant agrees to make available to City all accounting and Project records. Consultant acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine. Except to the extent audit rights are granted to the City by applicable law, the City shall have no audit rights with respect to the portion of services compensated on a lump/fixed sum basis.

8.2 Consultant shall during normal business hours make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such Agreement has not been accepted, then the Consultant shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Consultant in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

8.3 The City may, in its sole and absolute discretion, require the Consultant to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the Consultant shall abide by such requirements.

8.4 When an audit or examination determines that the Consultant has expended funds or incurred costs which are questioned by the City and/or any applicable state or federal agency, the Consultant shall be notified and provided an opportunity to address the questioned expenditure or costs.

8.5 Consultant agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by Consultant shall be the sole responsibility of the Consultant and shall not be paid from any Project funds received by the

Consultant under this Agreement.

8.6 If the City determines, in its sole discretion, that Consultant is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Consultant pay for such audit from non- City resources if Consultant is found to be at fault.

IX. INSURANCE

9.1 No later than 30 days before the scheduled services under this Agreement, Consultant must provide a completed Certificate(s) of Insurance to City's Office of Sustainability. The certificate must be:

- clearly labeled with the legal name of the service 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);
- properly endorsed and have the agent's signature, and phone number.

9.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Office of Sustainability. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

9.4 The City's Risk Manager reserves the right to recommend modification of 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. If the Consultant does not agree to the recommendations given by the City's Risk Manager this can result in breach of contract.

9.5 Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less

than the amount listed below. If the Consultant claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 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 Injury e. Contractual Liability f. Independent Contractors*	For Bodily Injury and Property Damage 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	Combined Single Limit for Bodily Injury and Property Damage of \$250,000 per occurrence
5. Professional Liability (Claims-made Coverage)	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
6. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate or its equivalent in Umbrella Liability Coverage.
* If Applicable	

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

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

City of San Antonio
Attn: Office of Sustainability
100 W. Houston Street,
7th Floor San Antonio, Texas 78205

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

- Include City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers' compensation and professional liability policies.

- Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.

- Consultant shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and

- Provide 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.

9.9 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.

9.10 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.

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

9.12 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.

9.13 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.

9.14 Consultant and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

X. INDEMNIFICATION

10.1 Consultant covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually or 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, volunteer or subcontractor of Consultant, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or 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.

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise the City in writing within 48 hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

10.3 Defense Counsel – City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing. Nothing in this clause shall apply to retention of counsel by Consultant's insurance provider who shall retain the right to select defense counsel on Consultant behalf pursuant to any contract between Consultant and said insurance provider.

10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Consultant or other person acting under the direction of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited

in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work subject to the satisfaction of Director and all personnel and subcontractors of Consultant shall be subject to the performance standards applicable to Consultant under this Agreement. If Consultant retains any employees or subcontractors, Consultant shall notify the City within ten (10) days of retention in writing.

11.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or sub-contractor, indicate only such an entity as has been approved by Director.

11.3 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII., Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

12.1 Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Consultant's; that the doctrine of respondeat superior shall not

apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and Consultant's, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that Consultant has no authority to bind the City.

XIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

13.1 As a condition of entering into this agreement Consultant represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under section III.C.1 of the 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 contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. 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 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.

XIV. CONFLICT OF INTEREST

14.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business 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. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. AMENDMENTS

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. Director or her designee shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to the requirements of the City's charter or contracting policies and contingent upon appropriation of funds for any increase in expenditures by the City.

XVI. SEVERABILITY

16.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVII. LICENSES/CERTIFICATIONS

17.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. COMPLIANCE

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

XIX. NONWAIVER OF PERFORMANCE

19.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described

in **Article 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 hereunder 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 HEREUNDER 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 As a party to this Agreement, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXI. ADDITIONAL PROVISIONS

21.1 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.

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.

21.1.1 “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.

21.1.2 “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

21.1.3 By executing this Agreement with the City, Contractor hereby verifies that it does not boycott Israel, and will not boycott Israel during the Term of the Agreement. The City hereby relies on Contractor’s verification. If found to be false, the City may terminate this Agreement for material breach.

21.2 Boycotting Certain Energy Companies.

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.

21.2.1 “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.

21.2.2 “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).

21.2.3 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.

21.2.4 By or executing contract this Agreement with the City, Contractor hereby verifies that it does not boycott energy companies and will not boycott energy companies during the Term of this Agreement. The City hereby relies on Contractor’s verification. If found to be false, the City may terminate this Agreement for material breach.

21.3 Boycotting Firearm Entities.

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.

21.3.1 “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.

21.3.2 “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.

21.3.3 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.

21.3.4 By executing this Agreement with the City, Contractor 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 Agreement against a firearm entity or firearm trade association. The City hereby relies on Contractor’s verification. If found to be false, the City may terminate this Agreement for material breach.

21.4 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. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor’s certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXII. LEGAL AUTHORITY

22.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

25.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below.

XXVI. ENTIRE AGREEMENT

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

[Signature page follows]

EXECUTED and AGREED to by:

CITY:


CITY OF SAN ANTONIO

Doug Melnick
Director, Office of Sustainability

Date: _____

CONSULTANT:

WSP USA, Inc.



Alice Lovegrove, SVP, ENV SP
Project Manager, National Sustainability Lead

Date: 3/20/24

APPROVED AS TO FORM:

Sean T. Beiter
Assistant City Attorney

ATTACHMENTS:

1. Exhibit I, Request for Proposals for Climate Action Planning Services for the City of San Antonio (RFP 24-013; RFx 6100017502), issued by the City on October 20, 2023;
2. Exhibit II, Addendum I dated November 7, 2023;
3. Exhibit III, Addendum II dated November 20, 2023;
4. Exhibit VI, Compensation Schedule, submitted by WSP in response to the RFP as RFP Attachment B;
5. Exhibit V, Copy of enabling Ordinance No. 2024-03-__-__.

EXHIBIT “I”
REQUEST FOR PROPOSALS FOR CLIMATE ACTION PLANNING SERVICES FOR
THE CITY OF SAN ANTONIO (RFP 24-013; RFX 6100017502), ISSUED BY THE CITY
ON OCTOBER 20, 2023

EXHIBIT “II”
ADDENDUM I DATED NOVEMBER 7, 2023

EXHIBIT “III”
ADDENDUM II DATED NOVEMBER 20, 2023

EXHIBIT “VI”
COMPENSATION SCHEDULE, SUBMITTED BY WSP IN RESPONSE TO THE RFP
AS RFP ATTACHMENT B

EXHIBIT “V”
COPY OF ENABLING ORDINANCE NO. 2024-03-__-__