

ORDINANCE 2022-06-23-0507

**APPROVING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH IDCUS, INC. FOR A SITE CIVIL ENGINEERING SERVICES NON-SERVICE ALLEY INVENTORY (NSA) PROJECT. THIS AGREEMENT IS FOR ONE YEAR FOR A NOT TO EXCEED AMOUNT OF \$448,000.00. FUNDS ARE AVAILABLE FROM THE RIGHT-OF-WAY MANAGEMENT FUND AND ARE INCLUDED IN THE FY 2022 - FY 2027 CAPITAL IMPROVEMENT PROGRAM.**

\* \* \* \* \*

**WHEREAS**, there are approximately 4,103 Non-Service Alleys (NSAs) within the City of San Antonio with many of these alleys are neglected resulting in overgrown vegetation, rutting, drainage and ponding issues; and

**WHEREAS**, NSAs are defined as alleys not receiving collection services by the Solid Waste Management Department. Chapters 14 and 35 of the Unified Development Code (UDC) state that the maintenance of NSAs is the adjacent property owner's responsibility; and

**WHEREAS**, the Public Works Department issued a task order to IDCUS, Inc., as part of their 2017 On-Call Civil Engineering contract, to perform a pilot inventory and condition assessment of approximately 10% of the NSA inventory (425 NSAs) in Districts 1 and 7; and

**WHEREAS**, the purpose of the pilot program was to identify NSA ownership (whether alley was owned by the City, utilities or abutting property owner), classify alley use (whether alley was of utility or drainage use) and completion of condition assessment of the alleys to identify accessibility and defect issues; and

**WHEREAS**, as a result of this pilot program's success, the Public Works Departments intends to complete the same effort for the remaining 3,678 NSA locations throughout the City; and

**WHEREAS**, a Request for Qualifications (RFQ) for the inventory and condition assessment of non-service alleys was issued on December 20, 2021, pre-submittal conference was held on January 6, 2022, three (3) firms responded, and responses were due on January 25, 2022 with selection committee selecting IDCUS, Inc.; and

**WHEREAS**, as services of this agreement the consultant IDCUS, Inc. will provide researching property records to identify NSA ownership, classifying alley use and identifying the existence of utilities within each NSA, field verification of each NSA to identify the condition and location(s) of utility infrastructure defects to be addressed by applicable utility companies, update GIS layout with NSA information, and delivering compatible data in a final report to the City for the remaining 3,678 NSA locations throughout the City; and

**WHEREAS**, the agreement is for one year in the amount not to exceed \$448,000.00; and

**WHEREAS**, the inventory and condition assessment are anticipated to begin in June 2022 and estimated to be completed in May 2023; and

**WHEREAS**, this Ordinance approves the execution of a professional services agreement with IDCUS, Inc. for a Site Civil Engineering Services NSA Project for the inventory and condition assessment of NSAs citywide for one year in the amount not to exceed \$448,000.00; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager, or designee, is authorized and directed to execution of a Professional Services Agreement with IDCUS, Inc. for a Site Civil Engineering Services NSA Project for the inventory and condition assessment of NSAs citywide for one year in an amount not to exceed \$448,000.00. Funds are available from the Right-of-Way Management Fund and are included in the FY 2022 - FY 2027 Capital Improvement Program. A copy of the Professional Services Agreement is attached as **Exhibit I**.


**SECTION 2.** Payment is authorized to be encumbered with and made payable to IDCUS, Inc., in an amount not to exceed \$448,000.00. Payment is in support of FY2022 Non-Service Alley Inventory Project using Fund 29660000 with the WBS element 23-03813-01-02-01 and GL account 5201170. Funding for this project is provided by the Street Restoration Program Fund. and is in the FY2022-FY2027 CIP Budget.

Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.


**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and General Ledger Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


**PASSED and APPROVED** this 23<sup>rd</sup> day of June, 2022.

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney



## City of San Antonio

### City Council A Session Meeting June 23, 2022

17.

2022-06-23-0507

Ordinance approving the execution of a professional services agreement with IDCUS, Inc. for a Site Civil Engineering Services NonService Alley Inventory Project for one year not to exceed an amount of \$448,000.00. Funds are available from the RightofWay Management Fund and are included in the FY 2022 FY 2027 Capital Improvement Program. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works]

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Castillo seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKeeRodriguez, Viagran, Rocha Garcia, Castillo, Cabello  
Havrda, Pelaez, Courage, Perry

**Absent:** Sandoval



## **Exhibit I**

### **Professional Services Agreement**



**PROFESSIONAL SERVICES AGREEMENT  
FOR  
SITE CIVIL ENGINEERING SERVICES  
NON-SERVICE ALLEY INVENTORY (NSA) PROJECT**

This Agreement is entered into by and between the **City of San Antonio**, a Texas Municipal Corporation ("City") acting by and through its Public Works Department Director and **IDCUS, Inc.** ("Consultant"), both of which may be referred to herein collectively as the "Parties".

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

**I. DEFINITIONS**

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

- 1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 "Consultant" is defined in the preamble of this Agreement and includes its successors.
- 1.3 "Director" shall mean the director of City's Public Works Department.

**II. TERM**

This Agreement shall commence upon execution by both parties, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services and upon written acceptance by City of Consultant's work product or services rendered, unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

**III. SCOPE OF SERVICES**

- 3.1 Consultant, in consideration for the compensation herein provided, as outlined in Article IV. Compensation to Consultant, shall render the required professional services, and any and all services which would normally be required by law or common due diligent practice, in connection with the Project, as more specifically outlined in Exhibit 1, Scope of Services.
- 3.2 Consultant shall complete all Project work within the Scope of Services in compliance with this Agreement, and agrees to staff the Project with sufficient necessary, qualified personnel in order not to delay or disrupt the progress of the Program. Time is of the essence.
- 3.3 All services and work performed under this Agreement must be conducted in full conformance with the Texas Occupations Code. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

- 3.4 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 VII, Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. City shall notify Consultant in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

#### IV. COMPENSATION TO CONSULTANT

- 4.1 For and in consideration of the services to be rendered by Consultant, City shall pay Consultant the not to exceed fee set forth in this Article IV, Compensation to Consultant. All services shall be performed in accordance with the professional standard of care set forth in Article XVIII, Licenses/Certifications, herein and to City's satisfaction.
- 4.2 The total compensation for all work to be performed by Consultant as fully defined in the Scope of Services, to include all travel and other expenses, shall not exceed **FOUR HUNDRED FORTY-EIGHT THOUSAND AND 00/100 U.S. DOLLARS (\$448,000.00)**. Consultant acknowledges that such not to exceed fee shall be sufficient compensation for all services, travel and other expense to be performed pursuant to or associated with the Scope of Services.
- 4.3 Consultant shall bill all services in accordance with the hourly rates set out in Exhibit 2, Fee Schedule. If City requests, Consultant shall submit itemized invoices, with all required back-up, in PRIMELink. Consultant may submit invoices no more than once monthly. Such invoices must be for work actually performed and actual travel and other expenses incurred and not previously invoiced and must show: a) the hours being billed delineated by task performed, employee name and position, b) a summary of the services performed during the period covered by the invoice, c) travel and other expenses with supporting documentation attached; and d) the total amount due for services, travel and expenses. Allowable travel and other expenses shall be invoiced at the actual cost incurred without markup. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City. City shall pay all undisputed amounts due under this Agreement within 30 days of receipt of a properly addressed invoice. Payment is deemed to be made on the date of mailing of the check or electronic fund transfer.
- 4.4 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.



## **V. OWNERSHIP OF DOCUMENTS**

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## **VI. RECORDS RETENTION**

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.
- 6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.



- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon fifteen (15) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4.1 Bankruptcy or selling substantially all of company's assets;
- 7.4.2 Failing to perform or failing to comply with any covenant herein required; or
- 7.4.3 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested by City.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by

Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

- 7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

### VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

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

If intended for Consultant, to:

IDCUS, Inc.  
8632 Fredericksburg Rd, Ste 200  
San Antonio, TX 78240

### IX. NON-DISCRIMINATION

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

### X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Public Works Department, which shall be clearly labeled "Non-Service Alley Inventory (NSA) Project" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind



coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Public Works Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- 10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:



TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	\$ 1,000,000 E.L. each accident \$ 1,000,000 E.L. Disease - each employee \$ 1,000,000 E.L. Disease - policy limit
3. Commercial General Liability Insurance to include coverage for the following: Premises/Operations Products/Completed Operations Personal/Advertising Injury Contractual Liability	For Bodily Injury and Property Damage of:  \$ 1,000,000 per occurrence; \$ 2,000,000 general aggregate, or its equivalent  in umbrella or excess liability coverage must include per project aggregate.
4. Business Automobile Liability:  Owned/leased vehicles Non-owned vehicles Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of:  \$ 1,000,000 per occurrence
5. Umbrella or Excess Liability Coverage	\$ 1,000,000 per occurrence combined limit  Bodily Injury (including death) and Property Damage.
Additional Requirements: Additional Requirement: Professional Liability \$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.	

- 10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Consultant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. 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.

- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

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

- 10.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant



demonstrates compliance with the requirements hereof.

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

#### **XI. INDEMNIFICATION**

- 11.1 **CONSULTANT FULLY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER REFERRED TO AS "INDEMNITEE" OR "INDEMNITEES" FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEE 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 CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS 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.**
- 11.2 The provisions of this Article XI solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.



## **XII. ASSIGNMENT AND SUBCONTRACTING**

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

## **XIII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.



#### **XIV. EQUAL EMPLOYMENT OPPORTUNITY**

Consultant shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation unless exempted by state or federal law, or as otherwise established herein. Specifically, Consultant agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

#### **XV. CONFLICT OF INTEREST**

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
  - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
  - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Consultant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Consultant. The Director shall have the authority to execute amendments that require up to \$25,000.00 in increased cost on behalf of the City without further action by the San Antonio City Council, subject to appropriation of funds for the increase in cost. Any other change will require approval of the City Council by passage of an ordinance therefore.

## **XVII. SEVERABILITY**

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

## **XVIII. LICENSES/CERTIFICATIONS**

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. Consultant further warrants that the services required under this Agreement shall be performed with the same degree of professional skill and care that are ordinarily exercised by similar consulting professionals performing similar services in Bexar County, Texas.

## **XIX. COMPLIANCE**

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

## **XX. NONWAIVER OF PERFORMANCE**

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

## **XXI. LAW APPLICABLE & LEGAL FEES**

**21.1 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.**



- 21.2 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.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

## **XXII. LEGAL AUTHORITY**

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

## **XXIII. PARTIES BOUND**

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

## **XXIV. CAPTIONS**

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

## **XXV. INCORPORATION OF EXHIBITS**

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

Exhibit 1	Scope of Services
Exhibit 2	Fee Schedule

## **XXVI. ENTIRE AGREEMENT**

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

## **XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 27.2 "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.
- 27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 27.4 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's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

## **XXIX. 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.

**XXX. 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.

*Signatures to follow*

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

**CITY OF SAN ANTONIO**

**IDCUS, Inc.**

<hr/>	<div>DocuSigned by:  2734A53DE6BE49E...</div> <hr/>
(Signature)	(Signature)
Printed Name:	Printed Name:
<hr/>	<u>Larry Janak</u>
Title:	Title:
<hr/>	<u>President &amp; CEO</u>
Date:	Date:
<hr/>	<u>5/11/2022</u>

Approved as to Form:

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Assistant City Attorney



# Non-Service Alley Inventory & Condition Assessment Scope of Work – IDCUS Team

## BACKGROUND

**Non-Service Alleys (NSA)** are alleys that do not receive garbage collection services by the City of San Antonio Solid Waste Management Department. The City of San Antonio's *Solid Waste Management Department* performed an alley inventory assessment in 2009. Out of this assessment, 4,357 alley segments were identified as not receiving collection services (~3.2 million centerline feet). These non-service alleys (NSAs) are the responsibility of the property owner to maintain per Chapter 14 and 35 of the Unified Development Code. However, many of these alleys have been neglected over the years in the form of overgrown vegetation, rutting, debris, and pavement distresses resulting in the alley to be non-traversable and resulting in drainage impediments and fences being impacted by standing water, etc.

### COSA Request for NSA Program:

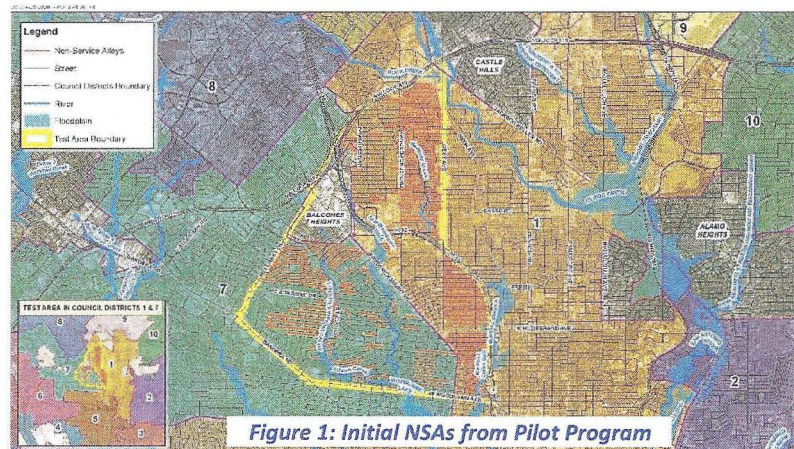
This program will create an updated inventory and condition assessment of all non-service alleys in San Antonio. The assessment will include determining the alley's accessibility due to pavement condition, vegetation, debris, rutting, drainage, and fencing impediments. The assessment, and will be implemented in an **Initial (or Pilot) Phase** and **Final Phase**.

The assessment will classify each alley as either public right-of-way, or privately owned with or without easements, and provide data such as length width, photos, and other required information. The initial phase for

the Test Area has been completed and included 425 NSA's located in **City Council Districts 1 and 7** shown in **Figure 1**. The Test Area included Research, Condition Assessment and Reporting of **425 Non-Service Alleys**, representing about 10% of the total NSAs in the current COSA Inventory. The initial phase provided documentation to support the

findings of the Research, Condition Assessment, and Reporting for the NSA Pilot Program.

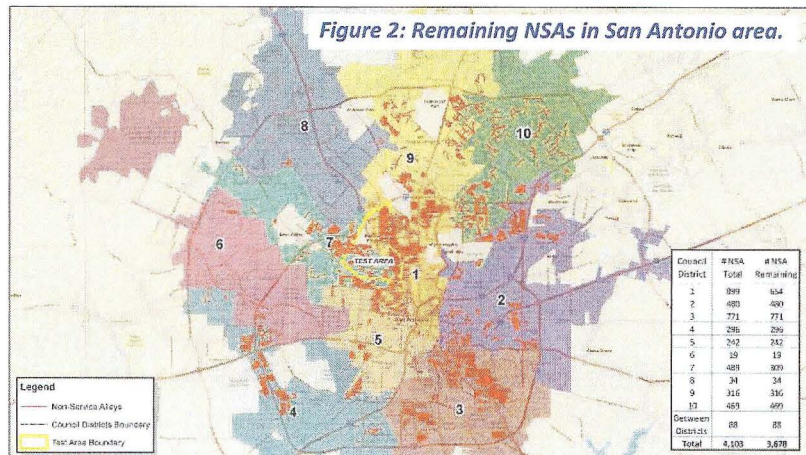
This scope of work is for the **Final Phase** to help COSA achieve its goals to provide an inventory of the **remaining Non-Service Alleys** for the entire San Antonio area, or a total of 3678 NSAs. Overall, there are approximately 4103 NSAs, as shown in Exhibit 2. This phase will include four (4) separate tasks (**Project Administration, Research, Condition Assessment, and Reporting**), each requiring work in conjunction with COSA staff and consists of work items described below.





The Final Phase (Phase 3) will include **research and field work to complete the Condition Survey**, and will include all tools approved by the City in Phases 1 and 2 from the Pilot Phase.

This program and process outlined below in Phase 3 would then be performed on the entire City-Wide Area and would include surveys of all the remaining **3678 NSAs**. Since it is possible that during the surveys additional NSAs may be discovered, Phase 3 will include up to a total of 3678 NSAs. *Any additional NSAs will be assessed for additional fee only.*



**Scope of Work for Final Phase:** The scope of work to be performed by **IDCUS Inc.** (Consultant) includes the following services:

- *Coordination with COSA*
- *Project Administration including monthly status reporting*
- *Conduct Condition Assessment (Field Work) for Non-Service Alleys (NSAs)*
- *Update GIS Layout with NSA Information*
- *Prepare and Submit DRAFT Report*
- *Address Comments and Final Report Submitted to COSA.*

### FINAL PHASE (PHASE 3)

#### CONDITION ASSESSMENT APPROACH

The purpose of this section is to outline the major tasks required to perform the NSA Condition Assessment by the CONSULTANT to gather the needed data for the Survey. The NSA Condition Assessment will be accomplished by: *Office/Research* and *Field Research/Data Collection*.

#### Condition Assessment:

- 1. Field Assessment:** The Consultant will collect the remaining data needed for the designated **NSA Condition Survey** through Field Assessments using the NSA Condition Survey Checklist. The Field Work will include the following:
  - Development of Training Session and Implementation Plan for Field Research/Assessment and Data Collection.
  - Coordination and supervision of Field Personnel to gather the required survey data. This will include the following logistics:
    - o Determine the best order of inspection of the Alleys, and
    - o Potential obstacles that might affect the inspection of the Alleys
  - Consultant will perform the Field Assessments of **up to 3678 COSA Non-Service Alleys** in Phase 3. The Field Assessment / Data Collection will be performed using the NSA Survey Checklist with Tablets/Handheld Devices purchased for this project.
  - Consultant will provide an Independent QA/QC Plan & Verification of the Accuracy of Data Collection.



Project Management Team Monthly meetings:

1. Consultant will participate in a kick-off meeting (i.e. outline Project Approach, consistency of the Assessment, Measures of Effectiveness, etc.)
2. Consultant will provide any Training, as needed, with new field crews and/or COSA staff (COSA Public Works, GIS Dept. and other staff) prior to Research and Field Assessments.
3. The Consultant will participate in monthly meetings with COSA (either in person or by WebEx) to Report Progress, discuss issues, and coordinate other project related issues.
4. Consultant will prepare an Agenda, Action Items list and progress updates for the meetings and will prepare meeting minutes within one week after the meeting.

**Field Assessment/Data Collection for Non-Service Alleys (NSAs)**

Consultant will perform field assessments and data collections for all COSA NSAs in **Phase 3**. The Consultant will use the Assessment Tools for each Non-Service Alley that will consist of answering a series of questions from the approved **NSA Inventory Checklist**, including accessibility of each Non-Service Alley. The Consultant will use Tablets or Handheld Devices for inputting Data collected and to take at least two (2) photos at each NSA in the field. The Consultant will purchase up to (3) handheld devices (Tablets, I-Pads, & charging equipment)

Consultant will perform the following Tasks for **Field Assessment/Data Collection in Phase 3**:

1. Consultant will obtain data on each NSA using the Alley Assessment Tool. For this SOW, IDC assumed the following for determining the time needed for the field assessment:
  - Crew = 2 person
  - Crew can average 17 to 20 NSAs per day or up to 100 Non-Service Alleys/week.
  - Crew will work 40 hours per week average (Monday thru Friday).
  - Number of Crews = two (2) (typical) and additional crews as needed.
  - Number of Weeks = 3 @ ~ 100 NSAs or 300 NSA/ Week (Depending on weather).
  - Crews will need one (1) Tablet w/Software & Questionnaire with the *Condition Survey*
  - Field Staff will wear badges and vests to help identify them as on *official business*.
2. Consultant will assess all COSA Non-Service Alleys (NSAs) and provide documentation (minimum of 2 photos) of each. Consultant will provide consistent assessments for each NSA, including answering questions on the Survey provided by COSA in its Assessment Checklist. The Consultant will perform QC and Verification to ensure consistency and accuracy of the Field Assessments for each Non-Service Alley.

**DELIVERABLES**

1. The Consultant will prepare monthly progress reports, including number of Non-Service Alleys assessed, a layout showing the areas covered, and an update on the Budget and Staffing for the Field work.

### SCHEDULE (Figure 3)

- NTP – June 10, 2022 (*Assumed*)
- June 10–30, 2022: Work Plan/Implementation/Training
- June 10 – Nov. 30, 2022: Research/GIS/Planning/Data Collection
- July 1 – Dec. 31: Field Assessments/Data Collection
- Dec 1 - Jan. 30: Review/Update Data from Field Assessments/QC Verifications
- Feb. 2023: Prepare DRAFT Summary Report and Present/Submit to COSA
- April 2023: Final Summary Report and Present/Submit to COSA
- May 2023: Address final COSA Comments and **Submit Final Report.**
- May 31, 2023: Project Close-out.

IDCUS - NSA Project Schedule	2022							2023				
Project Task	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Non-Service Alley Inventory (NSA)												
NTP												
Scope/Project Setup												
Research/GIS/Training												
Field Work Crew 1												
Field Work Crew 2												
QC Review of Field Work/GIS												
DRAFT Report												
Final Report/Presentations												
Project Close-Out												

Figure 3: NSA Project Schedule

### Final Results Summary

The Consultant team will have up to 12 calendar months (one year) to complete the tasks defined below and prepare the final deliverables. The team will prepare and update a project schedule of completion and attend monthly project meetings with COSA staff. These Project Meetings will be through conference calls/WebEx or in person depending on the subject matter discussed and *COSA preference*. Consultant will present results to the COSA Project Manager and other COSA Staff and assist COSA in other communications for this project as needed to upper management. IDCUS will provide up to two (2) presentations to the City of San Antonio to discuss the NSA Condition Assessment and results.

### Additional Services:

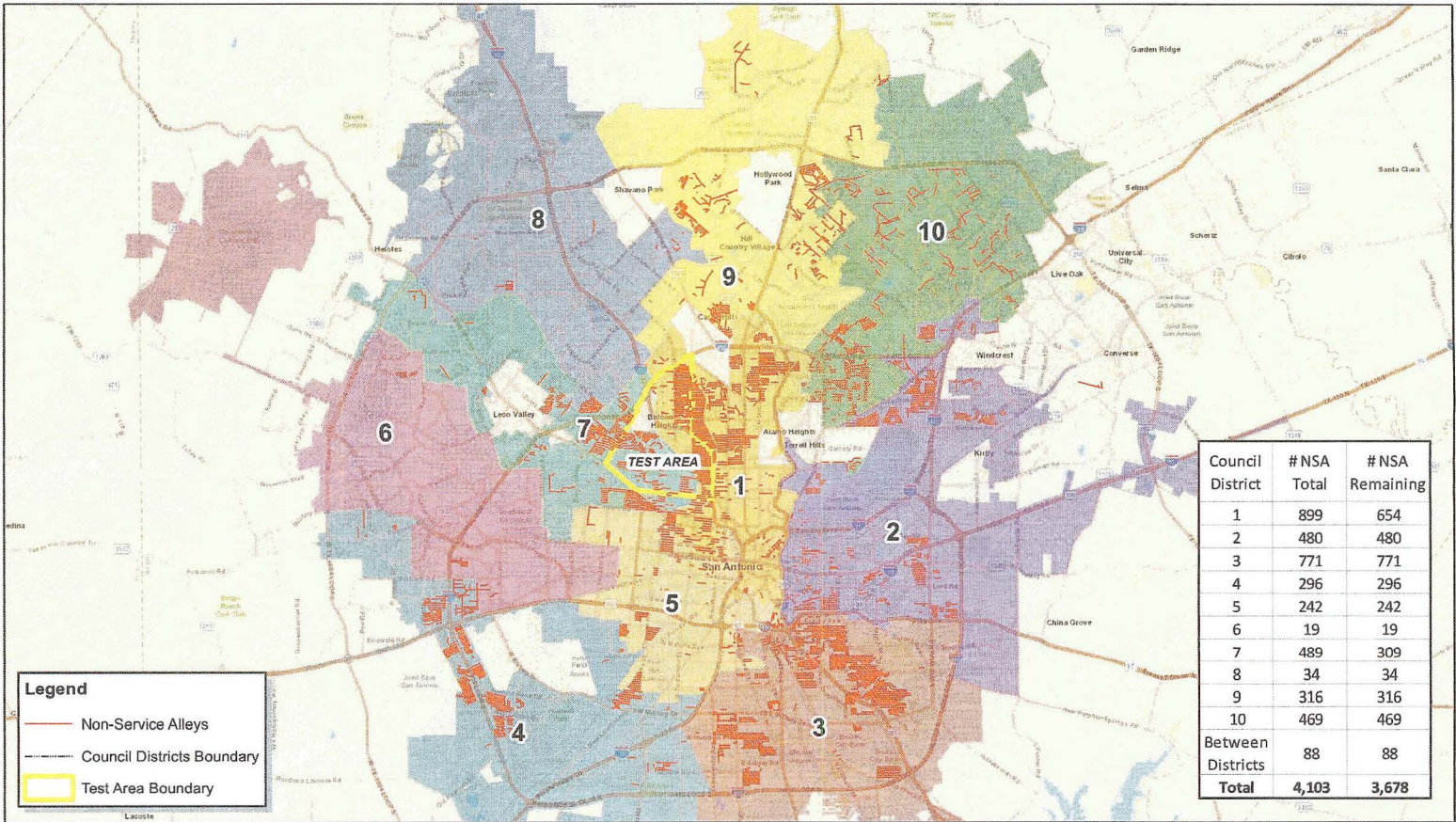
- If the City requests IDCUS to assess **additional NSAs** that increases the number of the remaining NSAs assessed (over 3678 NSAs), a supplemental agreement for additional fee will be required.
- If the City requests IDCUS to inventory or collect additional data for the original 425 NSAs assessed in the Pilot Phase, a supplemental agreement for additional fee will be required.
- If the City requests IDCUS to **revise the Inventory Checklist** developed in the original Pilot Phase, a supplemental agreement for additional fee will be required.



1. The CONSULTANT will prepare a Technical Summary Report for the work provided. The Summary will include the following items:
  - *Number of Non-Service Alleys Assessed, along with a layout of NSAs assessed and average time assessed per NSA.*
  - *Summary of methodologies used to perform the Assessment*
  - *Summary of Training and Implementation Plan*
  - *Summary of Results from the NSA Condition Assessments*
  - *Summary of Recommendations including general treatment for NSAs per Classification (Public ROW, Private w/Utility Easement, Private w/Drainage Easement, etc.)*
  - *Summary of Suggested Program Plan to Implement the NSA Alley Improvements.*
  - *Summary of Lessons Learned, and Recommendations for any future Assessments.*
  - Consultant will submit a **final executive summary** for the Non-Service Alley Assessment, which will show the assessment results for all Non-Service Alleys in tabular form.
2. Prepare and Submit DRAFT Report to COSA. The Report will include:
  - a. *Classification of NSAs,*
  - b. *Condition Assessment,*
  - c. *General Summary of Treatments per NSA Classification*
  - d. *Other relevant items included in Item 1 above.*
3. Meet with COSA to review DRAFT Summary and discuss COSA Comments.
4. Prepare Submit a **FINAL Report** to COSA.

**DELIVERABLES (Phase 3)**

- Written progress reports with Action Items (Monthly)
- Draft agenda and Meeting Minutes
- GIS Files (*in the file format and projection specified by COSA*) with all NSA Surveyed.
- Draft Final Report as outlined above.
- Presentation (up to 2 presentations) to the City of San Antonio to summarize findings and results (as requested).
- **Final Report.**



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0 1 2 4 Miles



**NON-SERVICE ALLEYS IN SAN ANTONIO (3,678 ALLEYS)  
(TEST AREA EXCLUDED)**

EXHIBIT  
**A-3**