

# On-Call Real Estate Appraisal Services Agreement

(Name of Appraiser)

This On-Call Commercial Real Estate Brokerage Services Agreement is undertaken as of the Effective Date herein between the City of San Antonio and the Broker designated below.

## Authorizing Ordinance:

**Effective Date:** The later of (A) the effective date of the Authorizing Ordinance or (B) the date of later of the signatures on behalf of the two parties to this Agreement.

## Appraiser:

## Appraiser's Address:

**Term:** 1 year

**Renewal:** City may renew this Agreement for up to three (3) additional 1-year terms.

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## 1. Definitions.

1.01. “Appraiser ” means Insert Name of Appraiser.

1.02. “CCMS” means City’s Contract Management System, whereby payments made by Broker to Consultants, Sub-Consultants, Contractors and/or Subcontractors, said payments confirmed by Consultants, Sub-Consultants, Contractors and/or Subcontractors pursuant to this Project and issued Task Orders, are entered by Appraiser and its Consultants, Sub-Consultants, Contractors and Subcontractors and are monitored by City for compliance.

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

1.04. “Compensation” means amounts paid to Appraiser for services render pursuant to under this Agreement.

1.04. “Director” means the director of the City of San Antonio (hereafter referred to as “City”) Transportation & Capital Improvements Department (hereafter referred to as “TCI”).

1.05. “Party” means City or Appraiser individually.

1.06. “Parties” means City and Appraiser collectively.

1.07. “PRIMELink”, as more fully defined in **Section 4.06** herein, means City’s internet-based project management software for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Appraiser.

1.07 “Project” means any Task Order assigned to Appraiser by City under this Agreement.

1.08 “Project Property” means property to which an issued Task Order, pursuant to this Agreement, relates.

1.09 “Proposed Task Order Request” means a request to Appraiser to submit a Proposal for a specific Project, as further defined herein.

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

1.11 “Finalized Task Order” means a written agreement, authorized by both parties in the City’s Portal system and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Task Order as further defined herein.

1.12 “Services” means those services described in the Scope of Services, as set out in an issued Task Order.

1.13 “Task Order” means [REDACTED]

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

1.15 “Work” means the services required by the issued Task Order, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Broker or any Sub-Consultant, material suppliers or any other entities for which Broker is responsible to fulfill Appraiser’s Task Order obligations.

## 2. Scope of Services.

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

2.02. City may assign Work (hereafter referred to as “Projects” or “Task Orders”) to Appraiser. For each Project or Task Order assigned to Appraiser under this Agreement, City and Appraiser shall establish agreed upon Project performance measures or Project performance goal(s).

2.03. Appraiser shall work closely with Director and appropriate City officials and shall perform all tasks related to Projects to timely fulfill Project goals.

2.04. Appraiser shall cooperate with City and deliver to City, in a form satisfactory to City, all sales Agreements, lease Agreements, data reports (as requested) and documents arising out of Appraiser’s services.

2.05. In fulfilling its responsibilities under this Agreement:

2.05.01. Appraiser is prohibited from and shall not purport to bind City to any sale, purchase or lease Agreement. No Agreement binds the City unless formally approved by the San Antonio City Council, as evidenced by passage of an ordinance. Further, Appraiser may not execute any documents in the name of or on behalf of City.

- 2.05.02. Appraiser shall not represent to any third party it has authority to sign for or in any way bind City to any legal relationship.
- 2.05.03. Appraiser may, at Appraiser's sole cost and expense, advertise Project Property, place for-sale or for-lease signs on Project Property, prepare comparative market analyses, disseminate information about Project Property and/or authorize other Appraisers, salespersons, inspectors, appraisers and repair personnel to enter Project Property, as previously approved in writing and directed by City. Appraiser shall not use any advertising copy not previously approved by City in writing.

### **3. Compensation**

3.01 The Compensation for all services included in this Agreement SHALL NOT EXCEED One Hundred Thousand and No/100 (\$100,000.00) per year. Any extension of this Agreement, up to three (3) additional one-year "Extension Periods," may increase the total amount of this Agreement to an amount not to exceed Four Hundred Thousand and No/100 (\$400,000.00)

3.02. Appraiser shall submit a Proposed Service Plan for each Project or Task Order City requests to be performed under this Agreement. City either will approve or disapprove each Proposed Service Plan. The City's approval shall be evidenced by a finalized Task Order executed by both parties in City's internet-based project management system (hereafter referred to as "PRIME*Link*" and more fully defined in Section 4.06 herein). Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into PRIME*Link*. Each finalized Task Order, as entered into PRIME*Link*, shall become a part of this Agreement.

- 3.02.01. Appraiser understands and agrees City may have entered into multiple agreements with other Appraisers and City has the authority to assign Work/Task Orders at its sole discretion.
- 3.02.02. Appraiser understands and agrees City makes no minimum guarantees with regard to the amount of services, if any, Appraiser may be extended under this Agreement.

3.03. Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the not to exceed pre-priced tasks and or hourly rates included in **Exhibit 1** hereto.

- 3.03.01 City shall pay Appraiser for services under this Agreement to the compensation requirements of **Exhibit C**, attached hereto and incorporated herein by reference.

3.03.02. Except as provided otherwise by this Agreement or in writing by City, Appraiser shall bear all costs and expenses incurred by appraiser under this Agreement including, but not limited to, labor, supervision of work, report reproduction, typing, travel, insurance, communication, advertising, computer access, materials, supplies, subcontractor costs, postage, telephone, stationery, rent, and any and all other costs and expenses necessary to complete Projects.

3.03.03. Appraiser compensation shall be as follows:

3.03.03.01. **Land Sales (whether or not improved):** Commissions are due at the time of sale on the condition of closing, and such disbursement shall be made through the title company.

3.03.03.02. **New Lease:** One-half the Commission at the time the lease Agreement is signed by all parties and all contingencies to the lease are fulfilled, including approval by City Ordinance and appropriation of funds by City, as necessary. The second half of the Commission shall be paid at the commencement of the lease term.

3.03.03.03. **Lease Renewal:** No Commissions are due Appraiser unless Appraiser is an active participant in the renewal process, at the request of and as solely determined by City. If City determines Appraiser was an active participant in such renewal process, then the Commission is due on commencement of the renewal term.

3.04. Appraiser may share Commissions as allowed by law, but City shall not pay any Commission additional to that required by this Agreement.

3.05. Unless otherwise agreed to by City in writing, City shall be liable for Appraisal Commissions only when City either is:

(A) the seller of real property being sold; or

(B) the landlord under a lease Agreement. In those transactions in which City is the buyer or tenant and therefore is not responsible for payment of the Commission, Appraiser may look to and be paid by the other parties involved in a transaction.

3.06. This Agreement does not provide Appraiser with exclusive rights to provide appraisal services to City. City reserves the right to perform such services itself or to utilize other appraisers.

3.07. City may assign Projects requiring compensation to Appraiser through an hourly fee in lieu of a Commission. The only Projects to which Appraiser shall be entitled to an hourly fee in lieu of a Commission are those identified in advance in writing by City and agreed upon by Appraiser. For a Project to qualify for hourly billing, the Parties hereto shall agree in advance in writing on the scope, fees and billing frequency, subject to approval of the Director and San Antonio City Council, if City Council approval is required. Under no circumstances, however, may Appraiser's hourly fee exceed **One Hundred Fifty Dollars and NO/100 (\$150.00)** per hour.

#### **4. Method of Payment**

4.01. Payments to Appraiser shall be in the amount shown on the invoices, consistent with the Task Order and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are judged unsatisfactory and which previously have not been approved by the Director. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

4.01.01. Payment solely may be made based on the units of services completed and approved by City and the associated unit price for such service, as may be described in Appraiser's proposal/fee schedule (as shown in **Exhibit 1** hereto) and the approved Task Order.

4.01.02 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Appraiser entering itemized invoices, with required back-up and reference to the individual Task Order, in *PRIMELink*. Entered invoices shall indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.

4.02. Appraiser shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others, in connection with a Project and the performance of the Work, and shall, if requested, provide City with evidence of such payment. Appraiser's failure to make payments within such ten-day period shall constitute a material breach of this Agreement, unless Appraiser is able to demonstrate to City a bona fide dispute associated with an unpaid Consultant, Sub-Consultant, Contractor or Subcontract and the provided service. Appraiser shall include a provision in each of its Consultant, Sub-Consultant, Contractor and Sub-Contractor

agreements imposing the same payment obligations on Consultant, Sub-Consultants, Contractor and Subcontractor as are applicable to Appraiser hereunder and, if City so requests, Appraiser shall provide copies of such payments made to Consultant, Sub-Consultants, Contractors and Subcontractors to City. If Appraiser fails to make payment promptly to a Consultant, Sub-Consultant, Contractor and/or Subcontractor for Services for which City has made payment to Appraiser, City shall be entitled to withhold payment to Appraiser to the extent necessary to protect City.

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

4.04. Appraiser may submit a request for Partial Compensation, prior to a Task Order's completion. A request for Partial Compensation shall be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report, and approved by the Director and at City's sole discretion. Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each service/Project, as may be described in fee schedule and/or hourly rates included in **Exhibit 1** hereto.

4.05. Task Order Close Out and Final Payment:

4.05.01. Appraiser's final billing shall indicate on its face: "Final Bill - No Additional Compensation is Due to Appraiser".

4.05.02. City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Appraiser is responsible due to:

4.05.02.01. delays in the performance of Appraiser's Work;

4.05.02.02. third-party claims filed or reasonable evidence received indicating a probable filing of such claims, unless security acceptable to City is provided by Appraiser;

- 4.05.02.03. failure of Appraiser to make payments properly to Sub-Consultants, suppliers and/or vendors for supplied services, labor, materials or equipment;
  - 4.05.02.04. reasonable evidence Appraiser's Work cannot be completed for the unpaid balance amount under an assigned Task Order and this Agreement;
  - 4.05.02.05. damage to City; or
  - 4.05.02.06. persistent failure by Appraiser to carry out the performance of its services in accordance with this Agreement.
- 4.05.03. When the above reasons for withholding are removed or remedied by Appraiser, compensation of the amount withheld shall be made by City within a reasonable time. City shall not be deemed in default by reason of withholding compensation to Appraiser, as provided for in this **Article III**.
- 4.05.03.01. In the event of any dispute(s) between the Parties hereto, regarding the amount properly compensable for any Phase, as final compensation or regarding any amount that may be withheld by City, Appraiser shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such claim. In the event Appraiser does not initiate and follow the claim procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Appraiser.
  - 4.05.03.02. City shall make final compensation of all sums due Appraiser not later than thirty (30) days after Appraiser's execution and delivery of a mathematically correct and accepted final Pay Application.
  - 4.05.03.03. Acceptance of final compensation by Appraiser shall constitute a waiver of all claims except those previously made in writing and identified by Appraiser as unsettled at the time of Appraiser's submittal of its final application for compensation.

4.05.03.04. Appraiser agrees to maintain adequate books, payrolls and records in forms deemed satisfactory to City in connection with any and all Services performed hereunder. Appraiser agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services, unless a dispute regarding the Project or Appraiser's Work is ongoing. If any dispute exists, upon notice from City, Appraiser shall retain its books, payrolls and records for more than four (4) years after completion of all Services performed herein and for as long after said four (4) years as City may request. At all reasonable times, Appraiser shall provide access to City and City's duly authorized representatives all personnel of Appraiser, as well as all books, payrolls and records of Appraiser, and City shall have the right to audit same.

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

## **5. Time and Period of Service**

5.01. The term of this Agreement shall commence upon its approval by the San Antonio City Council and upon the execution by both parties and shall remain in force for the period of **two (2)** years, herein referred to as the "Initial Term".

5.02. As the enabling Ordinance provides, City shall retain an option to extend this Agreement for **two (2) additional one-year periods**, hereafter referred to as the "Extension Period(s)". The Director shall have the authority to exercise such options at his/her discretion.

5.03. Time is of the essence of this Agreement. Appraiser shall perform and complete its obligations for the various Tasks of services under **Article II** Scope of Services herein in a prompt and continuous manner so as to not delay the work for a

Project in accordance with the schedules approved by City. If, upon review of a Task Order, corrections, modifications, alterations and/or additions are required of Appraiser for providing its services, those items shall be completed by Appraiser before that Task Order is approved.

5.04. Appraiser shall not proceed with the next appropriate Task Order without a written authorization from City. City may elect to discontinue Appraiser's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City retains the right to make adjustments to the scope of Appraiser's Task Order obligations at any time to achieve the required services.

5.05. Appraiser shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Appraiser's reasonable control. Within twenty one (21) days from the occurrence of any such event, for which time for performance by Appraiser shall significantly be extended under this **Section 5.05**, Appraiser shall give written notice thereof to City stating the reason for such time extension and the actual or estimated time for completion thereof. If City determines Appraiser is responsible for Appraiser's need for an extension of time, City shall have the right to make a Claim as provided in this Agreement.

5.06. This Agreement with Appraiser shall remain in force for a period of time City determines reasonably may be required for the construction services and the completion of a Project, including any extra work and any required extensions thereto, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

## **6. Record Retention.**

6.01. Appraiser accurately and completely shall maintain all documents, papers and records, whether paper, digital or otherwise, used or generated in the course of performing this Agreement (hereafter referred to as "Documents"). Documents specifically include all survey-related documents. Appraiser shall make the Documents available to City at Appraiser's offices during normal City business hours as often as City may deem necessary throughout the period of performance and the Retention Period of this Agreement. City may audit, inspect, examine and make excerpts and/or copies of the Documents.

6.02. Appraiser shall retain all Documents for five (5) years after expiration of the term of this Agreement, including any renewal terms exercised (hereafter referred to as "the Retention Period"). If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning the Documents or the services provided by Appraiser hereunder, Appraiser shall retain the records until resolution of the litigation or other questions. City may require Appraiser to deliver the Documents to City before or at the end of the Retention Period.

6.03. Except in the ordinary course of business, Appraiser shall not reveal any Documents to any third party, except under legal process. In case of legal process,

Appraiser shall notify City immediately, so City has the opportunity to assert any proprietary or other privileged interest it may have in the Documents.

6.04. Appraiser shall impose on its Consultants, Sub-Consultants, Contractors and Subcontractors, if any, all Record Retention obligations of this Agreement.

## **7. Ownership of Documents.**

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

## **8. Events of Default.**

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

- (A) Failure to comply with City's Small Business Economic Development Advocacy (hereafter referred to as "SBEDA") Ordinance Compliance and Provisions outlined in this Agreement, as solely determined by City.
- (B) Bankruptcy of Appraiser or of one or more of Appraiser's three highest-paid employees.
- (C) Failure to perform any obligation of Appraiser under this Agreement.
- (D) Unsatisfactory performance, as solely determined by City.

## **9. Remedies for Default.**

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

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

## **10. Other Termination.**

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

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

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

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

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

## **11. Post-Termination Procedures.**

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

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

11.03. If, at the time of this Agreement's termination, a fully executed sales Agreement or lease Agreement to consummate a transaction under this Agreement is pending, including already having been approved by Ordinance, then Appraiser's entitlement to compensation under this Agreement continues unless the lease or sale fails to close.

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

11.05. If, within ten (10) days after expiration or termination of this Agreement, Appraiser delivers written notice to City specifying the names of active prospects identified to a Project assigned to Appraiser and within thirty (30) days after the effective date of expiration or termination (hereafter referred to as "the Protection Period"), City enters into an Agreement of the character for which Appraiser had identified the prospect, then, subject to an appropriation of funds by the San Antonio City Council, City shall pay Appraiser the compensation otherwise due under this Agreement. To qualify for said compensation, Appraiser shall have done more than merely target a prospect with marketing materials. The extent of Appraiser's work with a prospect interest shall be shown by Appraiser's written documentation. If, during the Protection Period, a prospective property is sold or leased while assigned to another licensed real estate appraiser, then Appraiser accepts and agrees it shall have no claim to compensation for that sale or lease under this Agreement.

## **12. Insurance.**

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

## **13. Indemnity.**

**13.01 APPRAISER SHALL FULLY INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY APPRAISER OR ITS AGENT, APPRAISER UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH APPRAISER EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR**

**PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS APPRAISER AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

13.02 The provisions of this **Article 13 Indemnity** solely are for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Appraiser shall advise City in writing within twenty four (24) hours of any claim or demand against City or Appraiser known to Appraiser related to or arising out of Appraiser's activities under this Agreement.

#### **14. Assignment and Subcontracting.**

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

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

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

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

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

### **15. Independent Appraiser.**

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

### **16. Prohibited Interests in Contracts.**

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

16.02 Appraiser acknowledges it is informed of and will comply with the Charter of City and its Ethics Code prohibiting a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. Appraiser's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; a City officer or employee's parent, child or spouse; a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a Sub-Consultant or Subcontractor on a City contract; and/or a partner or a parent of a subsidiary business entity.

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

## **17. Licenses and Certifications.**

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

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

## **18. Agency Relationship.**

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

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

## **19. Compliance.**

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

## **20. Non-Discrimination Policy**

**20.01 Non-Discrimination.** As a Party to a contract with City, Appraiser understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, **Article X** of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Appraiser represents and warrants it has complied with City’s *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Appraiser shall adhere to City’s *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Appraiser retaliate against any person for reporting instances of such discrimination. Appraiser shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided nothing

contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Appraiser acknowledges it understands and agrees a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Appraiser from participating in City contracts, or other sanctions. This **Section 20.01** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Appraiser's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Appraiser shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

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

## **21. Authority to Bind.**

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

## **22. Appropriations.**

All obligations of City under this Agreement are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, City may terminate this Agreement and have no further liability.

## **23. Dispute Resolution.**

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

23.02. Filing suit on a claim that should be mediated hereunder waives the filing Party's right to demand mediation. But one Party's waiver does not affect another Party's rights under this Agreement. A defending Party does not waive mediation for so

long as, within a reasonable time after appearing, the defending Party gives written notice to the plaintiff Party or its counsel of its intent to require compliance with this **Section 21**.

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

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

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

(A) the copy of the Agreement before the court is authentic; and

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

23.06. Mediator fees shall be borne equally by the Parties.

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

## **24. Miscellaneous.**

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

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

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

24.04. **Integration** – This written Agreement represents the final Agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous

or subsequent oral agreements of the Parties. Both City and Appraiser attest there are no oral agreements between the Parties.

24.05. **Modification** – This Agreement only may be changed by a written Agreement, signed by both Parties against whom enforcement of any modification is sought. City may be bound to a modification by the Director’s signature, except any modification of the Fee to Appraiser causing the not-to-exceed total amount paid to Broker hereunder to exceed ONE HUNDRED THOUSAND and no/100 (\$10,000.00) shall be approved by ordinance of the San Antonio City Council.

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

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

Real Estate Manager  
Transportation and Capital Improvements Department  
Real Estate Division  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

With a copy to:

Director  
Transportation & Capital Improvements Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

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

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

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

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

24.13. **Administrative Agreements** – The Director may, without further San Antonio City Council action, agree to, sign and deliver on behalf of the City all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and may declare defaults and pursue remedies for such defaults. This **Section 22.13** does not authorize lease amendments or renewals without San Antonio City Council consent.

**25. Public Information.**

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

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**CITY OF SAN ANTONIO**

**APPRAISER**

By: \_\_\_\_\_  
Peter Zanoni  
Assistant City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved as to Form:**

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City Attorney

## **EXHIBIT A**

### **SCOPE OF WORK**

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

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

10. Appraiser shall provide bilingual services, as may be required by City on any issued Task Order.

### **Assignment of Work**

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

1. Upon acceptance of the Task Order request, the selected Respondent shall submit a written cost estimate to City, which shall include the number of hours required to complete the requested work, as well as the delivery date for the appraisal report.
2. Authorization to proceed shall be provided in form of a Task Order issued by City to Respondent. The Task Order shall detail the type of appraisal services required and a specific property description, as well as the required date for receiving finalized appraisal.
3. Upon receipt of City's Task Order, the selected Respondent fully shall inspect the assigned property, including all improvements, fixtures, structures, appurtenances and all other elements of value.
4. Respondent shall be responsible for ensuring that any and all items lying within the proposed property have been identified. Improvements and cost to cure items, such as fences, walls, signs, landscaping, drywells, backflow devices, etc., shall be addressed in the appraisal report.
5. Respondent's written report to City shall include, but not limited to:
  - a. factual information pertinent to the subject property;
  - b. prevailing trends affecting value;
  - c. analytical reasoning used in determining the subject property's highest and best use; and
  - d. support of a value conclusion.
6. Selected Respondent(s) shall prepare appraisal documentation utilizing the following forms:
  - Standard Freddie Mac Form 70,
  - Fannie Mae Form 1004, or a
  - Summary Appraisal report.

7. Respondent's finalized appraisal reports shall be submitted to City within twenty-one (21) calendar days from the date directed to proceed, unless otherwise noted on the issued Task Order.
8. Respondent's finalized appraisal report shall be submitted to City in an electronic PDF format plus hard copies, as outlined in the issued Task Order.
9. Respondent shall correct all incomplete, inaccurate or defective work within such time specified by City at no additional cost to City.
10. Respondent also may also be required to prepare documentation and testify in hearings during Eminent Domain proceedings and/or in jury trials on behalf of City when cases are appealed.
11. Task Order assignments shall be made at City's sole discretion; further, City shall not guarantee that selected Respondent(s) shall receive a particular volume or minimum number of assignments.
12. City may utilize appraisal services outside of said contract, when deemed in the best interest of City and approved by the Director of TCI or his/her authorized designee. Examples when an outside appraiser may be used are:
  - Selected Respondent(s) are unable to meet City's timeline requirement for specific Tasks;
  - A third party involved in a specific acquisition requires a particular type of appraiser that is not on City's approved list; or
  - The appraisal service is to be included as a negotiated term item for a sales agreement.

## EXHIBIT B

### INSURANCE REQUIREMENTS

Prior to the commencement of any work under this Agreement, Broker shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "**On-Call Real Estate Appraisal Services**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent, accompanied by an affidavit also signed by Broker, attesting the furnished Certificate(s) represent Appraiser's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and phone number. The certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this **Exhibit B** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance shall City allow modification whereby City may incur increased risk.

Appraiser's financial integrity is of interest to City; therefore, subject to Appraiser's obligation to maintain reasonable deductibles in such amounts as are approved by Appraiser's insurance companies, Broker shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof at Appraiser's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects. If a project does not justify these standard limits of insurance coverages, Appraiser may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury * d. Environmental Impairment/Impact – sufficiently broad to cover disposal liability *e. Explosion, Collapse, Underground	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
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for not less than two (2) years, subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error, or omission in performance of professional services.
6. * Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure
7. *Property Insurance: For physical damage to the property of Lessee, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
* If applicable	
<b>These insurance types and amounts only may be amended by the City of San Antonio Risk Management Division</b>	

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

Appraiser agrees to require, by written contract, all Consultants, Sub-Consultants, Contractors and/or Subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Appraiser herein, and provide to Appraiser a certificate of insurance and endorsement naming Appraiser and City as additional insureds. Policy limits of the coverages carried by Consultants, Sub-Consultants, Contractors and Subcontractors shall be determined as a business decision of Appraiser. Appraiser shall provide City with said certificate and endorsement prior to the commencement of any work by any Consultants, Sub-Consultant, Contractors and/or Subcontractor and through the period referenced in herein. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

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

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

Appraiser agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement the “other insurance” clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;
- Workers’ compensation, employers’ liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and
- Where allowed by respective policy provisions, terms and conditions, provide advance written notice to City of any suspension or non-renewal in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.
- All correspondences regarding Appraiser’s Insurance requirements shall be sent to:

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

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

In addition to any other remedies City may have upon Appraiser’s failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Appraiser to stop work hereunder until Appraiser demonstrates compliance with the requirements hereof.

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

It is agreed Appraiser’s insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by the City of San Antonio, for liability arising out of operations under this Agreement.

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

Appraiser and any Consultants, Sub-Consultants, Contractors and/or

Subcontractors are responsible for all damage to their own equipment and/or property.



**EXHIBIT C**

**COMPENSATION TO APPRAISER**

**EXHIBIT D**

**SBEDA ORDINANCE COMPLIANCE AND PROVISIONS  
AND  
SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN**

## **SBEDA ORDINANCE COMPLIANCE PROVISIONS**

### **A. Solicitation Response and Contract Requirements and Commitment**

Appraiser (also referred to as “Consultant” or “Respondent/Consultant” herein) understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

**Exception Request** - Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent’s Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

### **B. SBEDA Program**

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

### **C. Definitions**

**Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

**Certification or “Certified”** – refers to the process by which City’s Small Business Office (hereafter referred to as “SBO”) staff determines a firm to be a bona-fide small, minority-, women-owned or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as “ESBEs”) automatically are eligible for Certification as SBEs. Any firm may apply for multiple Certifications covering each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, City accepts any firm that is certified by local government entities and/or other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Commercially Useful Function** – means a S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm also must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it actually is performing, the S/M/WBE credit claimed for its performance of the work and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation when, in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Respondent/Consultant to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by City as fraudulent, if Respondent/Consultant attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Respondent/Consultant

shall not be given credit for the participation of its S/M/WBE Sub-Consultant or joint venture partner towards attainment of S/M/WBE utilization goals, and Respondent/Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORS or Respondents.

**Good Faith Efforts** – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

**HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as

specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult person that is of legal majority age.

**Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

**M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – refers to African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in or that are citizens of the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than one sixteenth (1/16<sup>th</sup>) percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Originating Department** – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

**Payment** – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONTRACTOR.

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**SBE Directory** - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

**Small Business Office Manager** – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

**Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

**Suspension** – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

**Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

#### **D. SBEDA Program Compliance – General Provisions**

As CONTRACTOR acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring

systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as

required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

#### **E. SBEDA Program Compliance – Affirmative Procurement Initiatives**

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

**SBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm; **and**

**M/WBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

## **F. Commercial Nondiscrimination Policy Compliance**

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR 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 the company retaliate against any person for reporting instances of such discrimination. The company 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. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company 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. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

## **G. Prompt Payment**

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

## **H. Violations, Sanctions and Penalties**

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).