PROFESSIONAL SERVICES AGREEMENT

FOR ON CALL CONSTRUCTION INSPECTION SERVICES

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Agreement is made and entered into in San Antonio, Bexar County, Texas; between the City of San Antonio, a Municipal Corporation in the State of Texas, hereinafter termed "CITY" and

NAME AND ADDRESS OF CONSULTANT

" CONSULTANT", said Agreement being executed by the CITY pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the CONSULTANT for construction inspection services hereinafter set forth in connection with the above designated Project for the City of San Antonio.

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ARTICLE I.
DEFINITIONS

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

1.1 "CITY" and "Owner" means to the City of San Antonio, Texas.

1.2 "CONSULTANT" means _____ and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, and all other persons or entities for which the CONSULTANT is legally responsible.

1.3 "Director" means the Director of CITY's Capital Improvements Management Services Department, Public Works Department or the designated project manager identified by the Notice to Proceed.

1.4 "Project" means the capital improvement/construction development undertaking of CITY for which CONSULTANT's services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.5 "Proposal" means CONSULTANT's Proposal to provide services for this Project.

1.6 "Total Compensation" means the lump sum amount of this Agreement.

1.7 "Scope of Services" mean the services described in Article IV Scope of Services,

1.8 "Owner Designated Representative (ODR) means person designated by Owner to act for Owner.

1.9 "Plans and Specifications" means the construction documents.

1.10 “Schedule of Values” means the values allocated to materials and various portions of the work, prepared in such form, and supported by such data to substantiate its accuracy as Owner may require.

1.11 “Application for Compensation” means written form for a request from CONSULTANT to be paid for completed work.

1.12 “SAWS” means the San Antonio Water System, Inc.

ARTICLE II.
COMPENSATION

2.1 The Compensation for all services included in this Agreement SHALL NOT EXCEED _____ **AND ___/100 DOLLARS ($_____)**. Extension of this agreement for _____ additional _____-year “extension periods” may increase the total amount of this AGREEMENT to an amount not to exceed _____ **AND ___/100 DOLLARS ($_____)**.

2.2 CONSULTANT shall complete a Work Order for each Work Task that the City requests to be performed under this AGREEMENT. Work Orders shall be numbered sequentially starting with number one and must reference this contract. The CITY will either approve or disapprove each Work Order. Once a Work Order is approved, it will become a part of this AGREEMENT. The Work Order form to be used is attached hereto and incorporated herein for all purposes as “Exhibit 2”.

2.2.1 CONSULTANT understands and agrees that the CITY has entered into multiple professional services agreements with other consultants and has the authority to assign work tasks at its sole discretion. Such Work Orders may include Applications for Compensation on account of changes in the Work which have been properly authorized by the Director, or by interim determination approved by the Director, but not yet included in Amendments to this Agreement.

2.3 CONSULTANT must obtain the prior written approval of the CITY for any additional services not described in the Contract Documents. Work Orders for additional services which are not included in the Documents (not described in the Exhibits hereto), must be approved by the Director as being appropriately within the scope of the AGREEMENT.

2.4 A negotiated fixed price, hourly, or lump-sum amount for each Work Task may be derived based on the Scope of Services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in "Exhibit 1".

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

2.5.1 Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each additional service as may be described in CONSULTANT's proposal/fee schedule (Exhibit "1") and the approved Work Order.

2.5.2 Monthly payments for work performed in the various additional services will be made to CONSULTANTS upon CONSULTANT'S furnishing itemized invoices referencing the individual Work Order, in a form acceptable to the Director, indicating the value of additional services performed to date on that work order and any other invoices or payments made related to that Work Order.

2.5.3 CONSULTANT must obtain the prior written approval of the CITY for any additional line items not described in the Contract Documents. Work Orders for additional services which are not included in the Documents (not described in the Exhibits hereto), must be approved by the Director as being appropriately within the scope of the AGREEMENT.

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

2.6 The CONSULTANT shall, within ten (10) days following receipt of Compensation from the Owner, pay all bills for services performed and furnished by others in connection with the Project and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. CONSULTANT's failure to make payments within such time shall constitute a material breach of this Agreement, unless the CONSULTANT is able to demonstrate to Owner bona fide disputes associated with the unpaid subconsultant and its work. CONSULTANT shall include a provision in each of its subagreements imposing the same payment obligations on the subconsultants as are applicable to the CONSULTANT hereunder, and if the Owner so requests, shall provide copies of such payments by the CONSULTANT to the Owner. If the CONSULTANT has failed to make payment promptly to the subconsultant for the Work for which the Owner has made payment to the CONSULTANT, the Owner shall be entitled to withhold payment to the CONSULTANT to the extent necessary to protect the Owner.

2.7 The CONSULTANT warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The CONSULTANT further warrants that upon submittal of an Application for Compensation, all Work for which Applications for Payment have been previously issued and payments received from the Owner shall, to the best of the CONSULTANT's knowledge, information and belief be free and clear of liens, claims, security interests or encumbrance in favor of the CONSULTANT, or other persons or entities making a claim by reason of having provided labor or services relating to the Work. **CONSULTANT SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONSULTANT.**

ARTICLE III.
METHOD OF PAYMENT

3.1 CONSULTANT may submit a request for Partial Compensation prior to submittal of a Request for Compensation in this Article. A request for Partial Compensation must be accompanied by a progress report detailing the Work performed. Any partial payment made shall be in proportion to the Work performed as reflected in the progress report and approved by the Director. Payment may also be made based solely on the tasks completed and approved by the Director, and the associated unit price for each Work Task as may be described in fee schedule and/or hourly rates included in Exhibit "1".

3.1.1 Project Close Out and Final Payment:

3.1.1.1 The CONSULTANT shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the invoices for services, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all the CONSULTANT's subconsultants and of any and all other parties required by the Owner that are either unconditional or conditional on receipt of final payment, Certificates of insurance showing continuation of required insurance coverages; such other documents as Owner may request; and consent of Surety to final payment.

3.1.1.2 CONSULTANT agrees to submit a statement of release with the final billing notifying the CITY that there are no further payments owed to the CONSULTANT by the CITY beyond the final bill, Final billing shall indicate "Final Bill - no additional payments are due to CONSULTANT".

3.1.2 The Owner may withhold payment to such extent as may be necessary, in the Owner's opinion, to protect the Owner from damage or loss for which the CONSULTANT is responsible, because of:

3.1.2.1 delays in the performance of the CONSULTANT's work;

3.1.2.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the CONSULTANT;

3.1.2.3 failure of the CONSULTANT to make payments properly to sub-consultants or vendors for labor, materials or equipment;

3.1.2.4 reasonable evidence that the CONSULTANT's work cannot be completed for the amount unpaid under this Agreement;

3.1.2.5 damage to the Owner; or

3.1.2.6 persistent failure by the CONSULTANT to carry out the performance of its services in accordance with this Agreement.

3.1.3 When the above reasons for withholding are removed or remedied by the CONSULTANT, payment of the amount withheld will be made within a reasonable time. The Owner shall not be deemed in default by reason of withholding payment as provided for in this Article.

3.1.3.1 In the event of any dispute(s) between the parties regarding the amount properly payable for any Phase or as final payment, or regarding any amount that may be withheld by the Owner, the CONSULTANT 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 dispute. In the event CONSULTANT does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.

3.1.3.2 The Owner shall make final payment or all sums due the CONSULTANT not more than thirty (30) days after the CONSULTANT's or Construction Contractor's execution of a final Certificate of Payment.

3.1.3.3 Acceptance of final payment by the CONSULTANT shall constitute a waiver of claims except those previously made in writing and identified by CONSULTANT as unsettled at the time of final Application for Payment.

3.1.3.4 CONSULTANT agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. CONSULTANT agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of CONSULTANT and all such books, payrolls and records, and shall have the right to audit same.

3.2 Internet-based Project Management Systems. Owner will administer its services through an Internet-Based Management System. In such case, the CONSULTANT shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, amendment, change orders and other administrative activities. The Owner shall administer the software, shall provide training to Project Team Members, and shall make the software accessible via the Internet to all Project Team Members.

3.2.1 All draws shall be submitted through the CITY's Program Management Portal. Prior to submittal of the first draw, CONSULTANT will submit a schedule of values for payment to be approved by the CITY, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

ARTICLE IV.
SCOPE OF SERVICES

[SUBJECT TO REVISION AS APPLICABLE]

4.1 CONSULTANT understands and agrees that the CITY has entered into multiple service agreements with other CONSULTANTs and has the authority to assign work tasks at its sole discretion.

4.2 The general scope for this project shall be comprised of construction inspection services as follows:

4.3 The CONSULTANT shall not commence work on any Work Task authorized under this AGREEMENT until being thoroughly briefed on the scope of the project and being notified in writing to proceed. The scope of the project and the CONSULTANT's services required shall be reduced by the CONSULTANT to a written Summary of the Scope meeting and included as a part of this Agreement. Should the scope subsequently change, either the CONSULTANT or the CITY may request a review of the anticipated services, with an appropriate adjustment in compensation.

4.4 The CONSULTANT, in consideration for the compensation herein provided, shall render the professional services described in this Section that are necessary for the development of the Project to substantial completion, including plans and specifications, construction services, any special and general conditions, and instructions to bidders as acceptable to the Director, or his duly authorized representative, hereinafter termed "Director", subject to other provisions of this Agreement.

4.5 The CONSULTANT shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein, in each authorized Task Order and in CONSULTANT's Scope of Services attached and incorporated herein as Exhibit "1". The Scope of Services shall be fully described in CONSULTANT's Proposal, as revised in accordance with negotiations with the CITY and approval of the Director for each authorized work task, and as provided in this Agreement.

4.6 The CONSULTANT will advise and consult with the CITY. The CITY's instruction to the CONSTRUCTION CONTRACTOR may be issued through the CONSULTANT but the CITY reserves the right to issue instructions directly to the CONSTRUCTION CONTRACTOR through inspectors or others designated CITY representatives. CONSTRUCTION CONTRACTOR understands that CITY may modify the authority of the CONSULTANT as provided in the terms of its contract relationship with the CONSULTANT, and the Director shall, in such event, be vested with powers formerly exercised by such CONSULTANT, provided written notice of such modification has been promptly served on the CONSTRUCTION CONTRACTOR in writing. Nothing herein shall authorize independent agreements between CONSTRUCTION CONTRACTOR and such CONSULTANT, nor shall the CONSULTANT be deemed to have a legal relationship with the CONSTRUCTION CONTRACTOR.

4.7 Upon acceptance and approval of the plans, reports or other deliverables required for a

phase of work, as set forth in the Scope of Services, Director shall authorize CONSULTANT, in writing, to proceed with the next phase of work.

4.8 The CONSULTANT will make visits to the Site at intervals appropriate to the phases (1) to become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed, and (2) to endeavor to guard the CITY against defects and the Work. However, the CONSULTANT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

4.9 The CONSULTANT will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since- these are solely the Contractor's rights and responsibilities under the Contract Documents. The CONSULTANT'S efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will generally conform to the Contract Documents.

4.10 The CONSULTANT will not be responsible for the CONSTRUCTION CONTRACTOR'S failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT will not have control over or charge of and will not be responsible for acts or omissions of the CONSTRUCTION CONTRACTOR, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work

4.11 Communications by and with the CONSULTANT's consultants shall be through the CONSULTANT. Communications by and with Subcontractors and material suppliers shall be through the CONSTRUCTION CONTRACTOR.

4.12 Based on the CONSULTANT's review of the CONSTRUCTION CONTRACTOR's Application for Payment, the CONSULTANT will approve the amounts due the CONSTRUCTION CONTRACTOR and will issue a recommendation for approval for payment in such amounts.

4.13 Except as otherwise provided in the Supplementary or Special Conditions, the CONSULTANT and the CITY will have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT or CITY considers it necessary or advisable, the CONSULTANT will have authority to require inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the CONSULTANT or CITY nor a decision made by either, in good faith, to exercise or not to exercise such authority shall give rise to a duty or responsibility of the CONSULTANT or the CITY to the CONSTRUCTION CONTRACTOR, subcontractors, material and equipment suppliers, agents or employees, or other persons or entities performing portions of the Work.

4.14 The CONSULTANT will review and approve or take other appropriate action upon the CONSTRUCTION CONTRACTOR's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in the Project specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of the CONSTRUCTION CONTRACTOR as required by the Contract Documents. The CONSULTANT's review of the CONSTRUCTON CONTRACTOR's submittals shall not relieve the CONSTRUCTION CONTRACTOR of its obligations. The CONSULTANT's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, or any construction means, methods, techniques, sequences or procedures. The CONSULTANT's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.15 The CONSULTANT will, within three (3) days after receipt of the CONSTRUCTION CONTRACTOR's Application for Payment, either issue to the Owner an approval for Payment for such amount as the CONSULTANT determines is properly due, or notify the Owner in writing of the CONSULTANT's reasons for withholding approval in whole or in part.

4.16 The issuance of an approval for Payment will constitute a representation by the CONSULTANT to the Owner, based on the CONSULTANT's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT's knowledge, information and belief, the quality of the work is in accordance with the Design Contract Documents or Construction Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents upon Substantial completion, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion, and to any specific qualifications expressed by the CONSULTANT. The issuance of an approval for Payment will further constitute a representation that the CONSULTANT and/or CONSTRUCTION CONTRACTOR is entitled to payment in accordance not with the Schedule of Values. The issuance of an approval for Payment will not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the CONSTRUCTON CONTRACTOR's right to payment, or (4) made any examination to ascertain how or for what purpose the CONSTRUCTION CONTRACTOR has used money previously paid on account of the Agreement Sum.

4.17 The CONSULTANT may withhold an approval for Payment in whole or in part, to the extent reasonably necessary to protect the Owner if, in the CONSULTANT's opinion, the representations to the Owner required by Section 4.14 cannot be made. If the CONSULTANT is unable to approve payment in the amount of the Application, the CONSULTANT will notify the Owner as provided in Section 4.13. If the Owner and the CONSULTANT cannot agree on a revised amount, the CONSULTANT will promptly issue an approval for Payment for the amount for which the CONSULTANT is able to make such representations to the Owner. The CONSULTANT may also withhold an Approval for Payment, because of subsequently discovered evidence, may modify the whole or a part of an approval for Payment to such extent as may be necessary, in the CONSULTANT's opinion, to protect the Owner from loss for which the CONSTRUCTION CONTRACTOR is responsible, including loss resulting from acts and omissions described below:

4.17.1 defective Work not remedied;

4.17.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which CONSTRUCTION CONTRACTOR is responsible hereunder unless security acceptable to the Owner is provided by the CONSTRUCTION CONTRACTOR;

4.17.3 failure of the CONSTRUCTION CONTRACTOR to make payments properly to the subcontractors and/or material providers; or

4.17.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum and CONSTRUCTION CONTRACTOR has failed to provide Owner adequate assurance of its continued performance within a reasonable time after demand;

4.17.5 damage to the Owner or another Contractor;

4.17.6 reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

4.17.7 persistent failure by the CONSTRUCTION CONTRACTOR to carry out the Work in accordance with the Agreement Documents.

The Owner will pay the undisputed portions of such Application for Payment within the time frames established in the Schedule of Values.

4.18 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided.

4.19 The CONSULTANT will prepare Change Orders and Field Work Directives, and with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Total Compensation or an extension of the time for construction. Such changes shall be effected by written order, which the Contractor shall carry out promptly and record on the as-built record documents.

4.20 The CONSULTANT and the CITY will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The CONSULTANT will receive and forward to the CITY, for the CITY's review and records, written warranties and related documents required by the Contract and assembled by the CONSTRUCTION CONTRACTOR, and will issue a final Approval for Payment upon compliance with the requirements of the Contract Documents.

4.21 Upon written request of the CITY or CONSTRUCTION CONTRACTOR the CONSULTANT will issue its interpretation of the requirements of the plans and specifications The CONSULTANT's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required for the CONSULTANT shall be furnished In compliance with Article IV, then delay shall not be recognized on account of failure by the CONSULTANT to furnish such interpretations until 15 days after written request is made for them.

4.22 Interpretations and decisions of the CONSULTANT will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

4.23 The CONSULTANT's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the CITY.

4.24 CONSULTANT's Approved Pre-priced Tasks and/or Hourly Rates dated _____ is incorporated by reference herein and attached as Exhibit 1.

ARTICLE V.
DESIGN PHASES REQUIREMENTS

5.1 Necessary design phase requirements will be established with the Task Order requesting services on an individual basis.

ARTICLE VI.
TIME AND PERIOD OF SERVICE

6.1 The term of this AGREEMENT shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of _____, hereinafter referred to as the "initial term".

6.2 As the enabling Ordinance provides the CITY shall retain an option to extend this AGREEMENT for _____ (___) additional one (1) year periods, hereinafter referred to as the “extension period”. The Director of CIMS shall have the authority to exercise such options at their discretion. In the event such options are exercised and any material provision of the AGREEMENT is modified, such amendment must be approved by the City Council.

6.3 Upon extension of this agreement, the not to exceed lump sum of the contract shall increase by $_____.00 for each year extended.

6.4 Time is of the essence of this Agreement. The CONSULTANT shall perform and complete its obligations for the various Tasks of work under Article IV "Scope of Services" of this Agreement in a prompt and continuous manner so as to not delay the development of the design work and so as to not delay the construction of the work for the Project in accordance with the schedules approved by the CITY with the CONSTRUCTION CONTRACTOR. If, upon review of task work, corrections, modifications, alterations, or additions are required of the CONSULTANT, these items shall be completed by the CONSULTANT before that Task is approved.

6.5 The CONSULTANT shall not proceed with the next appropriate Task Order without written authorization from the Director. The CITY may elect to discontinue the CONSULTANT's services at the end of any Task Order for any reason. However, if circumstance dictates, the Director may make adjustments to the scope of the CONSULTANT's obligations at any time to achieve the required design.

6.6 The CONSULTANT 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 CONSULTANT's reasonable control. Within twenty one (21) days from the occurrence of any event for which time for performance by CONSULTANT shall be significantly extended under this provision, CONSULTANT shall give written notice thereof to the CITY stating the reason for such extension and the actual or estimated time thereof. If the CITY determines that the CONSULTANT is responsible for the need for extended time, the CITY shall have the right to make a Claim as provided in this Agreement.

6.7 This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract, and completion of the Project including any extra work and any required extensions thereto unless discontinued as provided for elsewhere in this Agreement.

ARTICLE VII.
COORDINATION WITH THE CITY

7.1 The CONSULTANT shall hold periodic conferences with the Director or his representatives to the end that the Project as developed shall have the full benefit of the CITY's experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist the CONSULTANT in this coordination, the CITY shall make available for the CONSULTANT's use in planning and designing the Project all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and to this particular Project, at no cost to the CONSULTANT. However, any and all such information shall remain the property of the CITY and shall be returned by the CONSULTANT upon termination or completion of the Project or if instructed to do so by the Director.

7.2 The Director will act on behalf of, the CITY with respect to the work to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the CONSULTANT's services.

7.3 The CITY will give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of any defect in the CONSULTANT's services, in the work of the CONSTRUCTION CONTRACTOR, or any development that affects the scope or timing of the CONSULTANT's services.

7.4 Unless otherwise required by the CITY, the CITY shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. The CONSULTANT will provide the CITY reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by the CONSULTANT pursuant to other provisions of the Agreement, but the CONSULTANT shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

ARTICLE VIII.
REVISIONS TO DOCUMENTS

8.1 The CONSULTANT shall make without expense to the CITY such revisions to the drawings, reports or other documents as may be required to meet the needs of the CITY which are within the Scope of Services. After the approval of reports or other documents by the CITY, any revisions, additions, or other modifications made at the CITY's request which involve extra services and expenses to the CONSULTANT shall only be requested through an additional Task Order for services.

ARTICLE IX.
OWNERSHIP OF DOCUMENTS

9.1 All documents, including the original drawings, estimates, specifications, and all other documents and data previously owned by CONSULTANT, will remain the property of the CONSULTANT as instruments of service. However, it is to be understood that the CITY shall have free access to all such information with the right to make and retain copies of drawings, estimates, specifications and all other documents and data. Any reuse without specific written verification or adaptation by CONSULTANT will be at CITY's sole risk and without liability or legal exposure to CONSULTANT.

9.2 The CONSULTANT acknowledges and agrees that the CITY shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Agreement and shall be used as the CITY desires and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the CITY at no additional cost to the CITY upon request or termination or completion of this AGREEMENT without restriction on future use.

9.3 The CONSULTANT agrees and covenants to protect any and all proprietary rights of the CITY in any materials provided to the CONSULTANT. Such protection of proprietary rights by the CONSULTANT shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the CITY. Additionally, any materials provided to the CONSULTANT by the CITY shall not be released to any third party without the consent of the CITY and shall be returned intact to the CITY upon termination or completion of this Agreement or if instructed to do so by the Director.

9.4 The CONSULTANT hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Agreement to the CITY, including all equitable rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this Agreement shall be subject of an application for copyright by the CONSULTANT. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of the CITY (excluding any instrument of services, unless otherwise specified herein). The CONSULTANT shall, at its expense, defend all suits or proceedings instituted against

the CITY and pay any award of damages or loss resulting from an injunction, against the CITY, insofar as the same are based on any claim that materials or work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

9.5 The CONSULTANT may make copies of any and all documents and items for its files. The CONSULTANT shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers, or other persons, subsequent to the completion of the Project. The CITY shall require that CONSULTANT shall appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, including electronic copies, subsequent to the completion of the Project.

9.6 Copies of documents that may be relied upon by the CITY are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by the CONSULTANT. Files in editable electronic media format of text, data, graphics, or other types, (such as DWG or DGN) that are furnished by the CONSULTANT to the CITY or utility are only for convenience of the CITY or utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

9.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CONSULTANT, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by CONSULTANT or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the CONSULTANT to provide the services or protect deliverables to CITY, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of CONSULTANT or its suppliers.

ARTICLE X.
TERMINATION AND/OR SUSPENSION OF WORK

10.1 Right of Either Party to Terminate for Default

10.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure as provided in this Paragraph 10.1.

10.1.2 The party not in default must issue a signed, written notice of termination (citing this paragraph) to the other party declaring the other party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

10.2 Right of CITY to Terminate

10.2.1 The CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the CONSULTANT to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect on the twentieth day following receipt of said notice and upon the scheduled completion date of the performance phase in which CONSULTANT is then currently working, whichever effective termination date occurs first.

10.3 Right of CITY to Suspend Giving Rise to Right of CONSULTANT to Terminate

10.3.1 The CITY reserves the right to suspend this Agreement at the end of any phase for the convenience of the CITY by issuing a signed, written notice of suspension (citing this paragraph) which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way will guarantee what the total number of days of suspension will occur. Such suspension shall take effect immediately upon receipt of said notice of suspension by the CONSULTANT.

10.3.2 The CONSULTANT is hereby given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. CONSULTANT may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the CITY after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by the CITY.

10.4 Procedures CONSULTANT to follow upon Receipt of Notice of Termination

10.4.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or CONSULTANT immediately takes action to cure a failure to perform under the cure period set out hereinabove, CONSULTANT shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of such notice of termination (unless CONSULTANT has successfully cured a failure to perform) the CONSULTANT shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The CITY shall have the option to grant an extension to the time period for submittal of such statement.

10.4.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to the CITY, in the form requested by the CITY as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in Article IX above.

10.4.3 Upon the above conditions being met, the CITY shall promptly pay the CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.

10.4.4 The CITY, as a public entity, has a duty to document the expenditure of public funds. The CONSULTANT acknowledges this duty on the part of the CITY. To this end, the CONSULTANT understands that failure of the CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the CONSULTANT of any and all rights or claims to payment for services performed under this Agreement by the CONSULTANT.

10.4.5 Failure of the CONSULTANT to comply with the submittal of the statement and documents as required above shall constitute a waiver by the CONSULTANT of any and all rights or claims to collect monies that CONSULTANT may otherwise be entitled to for services performed under this Agreement.

10.5 Procedures CONSULTANT to Follow upon Receipt of Notice of Suspension

10.5.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the CONSULTANT shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

10.5.2 CONSULTANT shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

10.5.3 Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the CONSULTANT until such time as CONSULTANT may exercise the right to terminate.

10.5.4 In the event that CONSULTANT exercises the right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt by the CITY of CONSULTANT's notice of termination, CONSULTANT shall promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

10.5.5 Any documents prepared in association with this Agreement shall be delivered to the CITY as a pre- condition to final payment.

10.5.6 Upon the above conditions being met, the CITY shall promptly pay the CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.

10.5.7 The CITY, as a public entity, has a duty to document the expenditure of public funds. CONSULTANT acknowledges this duty on the part of the CITY. To this end, CONSULTANT understands that failure of CONSULTANT to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the CONSULTANT of any portion of the fee for which CONSULTANT did not supply such necessary statements and/or documents.

ARTICLE XI.
CONSULTANT'S WARRANTY

11.1 The CONSULTANT warrants that the services required under this Agreement will be performed with the same degree of professional skill and care that are typically exercised by similar consulting professionals performing similar services in Bexar County, Texas. The CONSULTANT further warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, the CITY shall have the right to terminate this Agreement under the provisions of Article X above.

ARTICLE XII.
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

12.1 **DEFINITIONS**

12.1.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

12.1.2 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

12.1.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

12.1.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

12.1.5 SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONSULTANT's submittal for this project Agreement, attached hereto and incorporated herein as "Exhibit 3".

12.2 **For this Agreement, the Parties agree that:**

12.2.1 The terms of the CITY's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Agreement by reference; and

12.2.2 The failure of CONSULTANT or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

12.2.3 Failure of CONSULTANT or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

12.2.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONSULTANT's SBEDA Plan ("Exhibit 3") shall constitute a material breach of the SBEDA Program and this Agreement.

12.2.5 CONSULTANT shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Exhibit 3") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be

submitted by CONSULTANT to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

12.3 **The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:**

12.3.1 Failure of CONSULTANT to utilize an SE that was originally listed at bid opening or proposal/SOQ submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or

12.3.2 Modification or elimination by CONSULTANT of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or

12.3.3 Termination by CONSULTANT of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or

12.3.4 Participation by CONSULTANT in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

12.4 **Remedies for Violation of SBEDA Program.** The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONSULTANT materially breaches the requirements of the SBEDA Program:

12.4.1 Terminate this Agreement for default;

12.4.2 Suspend this Agreement for default;

12.4.3 Withhold all payments due to the CONSULTANT under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

12.4.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONSULTANT under the Agreement.

12.4.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

12.5 **City Process for Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

12.6 **Special Provisions for Extension of Agreements.** In the event the CITY extends this Agreement without a competitive Bid process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

12.6.1 A SBEDA Utilization Goal for the extended period; and

12.6.2 A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and

12.6.3 The required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

12.6.3.1 Subject CONSULTANT to any of the remedies listed above; and/or

12.6.3.2 Result in resolicitation of the Agreement that was considered for extension.

ARTICLE XIII.
ASSIGNMENT OR TRANSFER OF INTEREST

13.1 The CONSULTANT shall not assign or transfer CONSULTANT's interest in this Agreement without the written consent of the CITY.

ARTICLE XIV.
INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any work under this Agreement, the CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Public Works Department/Contract Services, which shall be clearly labeled "**name of project**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Capital Improvements Management Services Department. No officer or employee other than the

CITY's Risk Manager shall have authority to waive this requirement.

14.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will CITY allow modification whereupon CITY may incur increased risk.

14.3 A CONSULTANT's financial integrity is of interest to the CITY. Therefore, subject to the CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the CONSULTANT's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

1. Workers' Compensation	Statutory
2. Employers' Liability	$1,000,000/$1,000,000/$1,000,000
3. Commercial General Broad Form Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; General Aggregate limit of $2,000,000 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 form)	$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 by reason of any negligent act, malpractice, error or omission in professional services.

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

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

14.5 The CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY; and

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

14.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, the CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the CONSULTANT'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 contract.

14.7 In addition to any other remedies the CITY may have upon the CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the CONSULTANT to stop work hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the requirements hereof.

14.8 Nothing herein contained shall be construed as limiting in any way the extent to which the CONSULTANT may be held responsible for payments of damages to persons or property resulting from the CONSULTANT's or its sub-CONSULTANT's performance of the work covered under this Agreement.

14.9 It is agreed that the CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.

14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

14.11 CONSULTANT and its subcontractors are responsible for all damages to their own equipment and/or property.

ARTICLE XV.
INDEMNIFICATION

15.1 **The CONSULTANT, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability**

and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT, regardless of whether the same is caused in part by the negligence of the CITY, its officers or employees. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

15.2 The CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the CONSULTANT, known to the Consultant, related to or arising out of the CONSULTANT's activities under this Agreement.

15.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights contractual or otherwise, to any other person or entity.

15.4 Acceptance of the final plans by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, subcontractors, and agents.

ARTICLE XVI.
CLAIMS AND DISPUTES

16.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and CONSULTANT arising out of or relating to the Agreement. Claims must be initiated by written notice. Every Claim of the CONSULTANT, whether for additional compensation, additional time, or other relief shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the CONSULTANT by his signature) of the CONSULTANT, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

16.2 Time Limit on Claims. Claims by the CONSULTANT or by the Owner must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the CONSULTANT must be initiated by written notice to the Owner. Claims by the Owner must be initiated by written notice to the CONSULTANT.

16.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, the CONSULTANT shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Agreement.

16.4 Claims for Additional Time. If the CONSULTANT wishes to make Claim for an increase in the time for performance, written notice as provided in this Section 15 shall be given. The CONSULTANT's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

16.5 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the CONSULTANT and to claims by the Owner:

16.5.1 No consequential damages will be allowed.

16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.

16.5.3 No profit will be allowed on any damage claim.

16.6 **Attorney's Fees. IN ACCORDANCE WITH SECTION 271.159 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE CONSULTANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE AGREEMENT OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND CONSULTANT HEREBY EXPRESSLY WAIVES SUCH CLAIMS.**

16.7 **No Waiver of Governmental Immunity. NOTHING IN THIS PARAGRAPH 15 SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

16.8 Alternative Dispute Resolution.

16.8.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement unless it would be impossible or impracticable under the circumstances.

16.8.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.8.3 Mediation.

16.8.3.1 In the event that the Owner or the CONSULTANT shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

16.8.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.

16.8.3.3 In the event the Owner and the CONSULTANT are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

16.8.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

ARTICLE XVII.
SEVERABILITY

17.1 If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any section, sentence, clause or parts of this Agreement in any one or more instance shall not affect or prejudice in any way the validity of this Agreement in any other instance.

ARTICLE XVIII.
INTEREST IN CITY CONTRACTS PROHIBITED

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

18.2 The CONSULTANT acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any the CITY agency such as the CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

18.3 The CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. The CONSULTANT further warrants and certifies that is has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

ARTICLE XIX.
CONFLICTS OF INTEREST DISCLOSURE

19.1 All CONSULTANT's must disclose if they are associated in any manner with a CITY Official or employee in a business venture or business dealings. Failure to do so will constitute a violation of the City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a CITY officer or employee also owns at least 10%, or having an established business relationship as client or customer.

ARTICLE XX.
STANDARD OF CARE/LICENSING

20.1 Services provided by CONSULTANT under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

20.2 The CONSULTANT shall be represented by personnel with appropriate certification(s)at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

20.3 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, subcontractors, and agents.

ARTICLE XXI.
RIGHT OF REVIEW AND AUDIT

21.1 The Consultant grants the City, or its designees, the right to audit, examine or inspect, at the City's election, all of the Consultant's records relating to the performance of the Work under the Agreement during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

21.2 The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Consultant agrees to allow the City's designee access to all of the Consultant's Records, Consultant's facilities, and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

21.3 Consultant must include this audit clause in any subcontractor, supplier or vendor contract.

ARTICLE XXII.
ENTIRE AGREEMENT

22.1 This Agreement represents the entire and integrated Agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the CITY and the CONSULTANT.

ARTICLE XXIII.
VENUE

23.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

ARTICLE XIV.
NOTICES

24.1 Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective party by depositing the same in the United States Postal Service addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five days of mailing.

If intended for the CITY, to:

Department Name
Attention:
114 West Commerce, ___ Floor
San Antonio, Texas 78205

If intended for the CONSULTANT, to:

ARTICLE XXV.
INDEPENDENT CONTRACTOR

25.1 In performing services under this Agreement, the relationship between the CITY and the CONSULTANT is that of independent contractor. By the execution of this Agreement, the CONSULTANT and the CITY do not change the independent contractor status of the CONSULTANT. The CONSULTANT shall exercise independent judgment in performing its duties and obligations under this Agreement and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of the CONSULTANT in the performance of this Agreement shall be construed as making the CONSULTANT the agent, servant or employee of the CITY, or as making the CONSULTANT or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the CITY provides to or for its employees.

ARTICLE XXVI.
LEGAL CONSTRUCTION

26.1 If any term or provision of this Agreement may be held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or

unenforceability shall not affect any other term or provision of this Agreement, and this Agreement shall be enforced as if such invalid, illegal, or unenforceable provision was not included in this Agreement.

ARTICLE XXVII.
CAPTIONS

27.1 The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

IN WITNESS WHEREOF, the City of San Antonio has lawfully caused these present, to be executed by the hand of the City Manager, or designee; CONSULTANT acting by the hand of_____, thereunto authorized TITLE; does now sign, execute and deliver this document.

Executed on this ____ day of _____, A. D. _____.

CITY OF SAN ANTONIO

_____
PENNY POSTOAK FERGUSON
ASSISTANT CITY MANAGER

_____
CITY CLERK DATE

APPROVED:

_____
CITY ATTORNEY

NAME OF CONSULTANT

_____
NAME.
TITLE

EXHIBIT 1

APPROVED PRE-PRICED TASKS AND/OR HOURLY RATES

EXHIBIT 2

TASK ORDER TEMPLATE

EXHIBIT 3

SBEDA PLAN