

PROFESSIONAL SERVICES AGREEMENT
ARCHITECTURAL SERVICES

STATE OF TEXAS
COUNTY OF BEXAR
OF SAN ANTONIO

PROJECT NAME – PROJECT NUMBER

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

ARCHITECT NAME AND ADDRESS

Architect duly licensed, and practicing under the laws of the State of Texas, hereinafter termed ARCHITECT said AGREEMENT being executed by the CITY pursuant to the CITY Charter, Ordinances, and Resolutions of the CITY Council, and by the ARCHITECT for architectural services to include civil, structural, mechanical, electrical and plumbing engineering as required and ADDITIONAL services as described in Article IV hereinafter set forth in connection with the above designated PROJECT for the CITY of San Antonio.

INDEX

<u>ARTICLE NO.</u>	<u>TITLE</u>	<u>PAGE</u>
I.	DEFINITIONS.....	2
II.	ARCHITECT'S RESPONSIBILITIES	4
III.	BASIC SERVICES	5
IV.	ADDITIONAL SERVICES.....	15
V.	FURTHER SERVICES REQUIRING AMENDMENT.....	15
VI.	ESTIMATED COST OF WORK.....	15
VII.	REVISIONS TO DRAWINGS AND SPECIFICATIONS	15
VIII.	TIME AND PERIOD OF SERVICE	16
IX.	INSURANCE REQUIREMENTS.....	17
X.	CITY'S RESPONSIBILITIES	19
XI.	COMPENSATION	20
XII.	OWNERSHIP OF DOCUMENTS.....	22
XIII.	TERMINATION AND/OR SUSPENSION OF WORK	23
XIV.	INDEMNIFICATION	25
XV.	CLAIMS AND DISPUTES.....	26
XVI.	SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM	28
XVII.	ASSIGNMENT OR TRANSFER OF INTEREST	31
XVIII.	SEVERABILITY	31
XIX.	INTEREST IN CITY CONTRACTS PROHIBITED	31
XX.	CONFLICTS OF INTEREST DISCLOSURE	32
XXI.	RIGHT TO REVIEW AND AUDIT	32
XXII.	ENTIRE AGREEMENT	32
XXIII.	VENUE.....	33
XXIV.	NOTICES	33
XXV.	INDEPENDENT CONTRACTOR.....	33
XXVI.	CAPTIONS	34
	EXHIBIT A SERVICE FEES AND REIMBURSABLES.....	35
	EXHIBIT B SCHEDULE OF PROJECT SERVICES	36
	EXHIBIT C ADDITIONAL SERVICES.....	37
	EXHIBIT D SBEDA PLAN	38

ARTICLE I

DEFINITIONS

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

- 1.1 "AGREEMENT" means this written document signed by the City and the ARCHITECT including any other document itemized and expressly referenced in or attached to and expressly made part of this AGREEMENT to include the ARCHITECT'S proposal, to the extent accepted by the City by and not in conflict with the articles of this Agreement, Services Fees & Reimbursables – Exhibit A, Schedule of Project Services - Exhibit B, Additional Services - Exhibit C, and SBEDA Plan - Exhibit D.
- 1.2 "APPLICATION FOR PAYMENT" means the form used by the CONSTRUCTION CONTRACTOR to make a request to be paid for completed Work and Materials stored at site.
- 1.3 "ARCHITECT" means _____ and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, and all other persons or entities for which the ARCHITECT is legally responsible.
- 1.4 "ARCHITECT'S SCHEDULE OF SERVICES" means a detailed listing of the services to be performed and the time sequence for the delivery to include an estimated dollar value which shall be attached for the payment of the services over the term of the AGREEMENT.
- 1.5 "CERTIFICATE OF PAYMENT" means the ARCHITECT'S certification of the CONSTRUCTION CONTRACTOR'S APPLICATION FOR PAYMENT recommending that payment for Work completed by the CONSTRUCTION CONTRACTOR be made as the Work and Materials stored on site are correct.
- 1.6 "CERTIFICATE OF SUBSTANTIAL COMPLETION" means the document issued by the ARCHITECT with City's consent at the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the CONTRACT so that the CITY can occupy or utilize the Work for its intended use
- 1.7 "CITY" and "Owner" mean the City of San Antonio, Texas.
- 1.8 "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, and 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 CITY and ARCHITECT arising out of or relating to the AGREEMENT.
- 1.9 "COMPENSATION" means the amount paid by CITY to ARCHITECT for completed services accepted by City under this AGREEMENT.
- 1.10 "CONSTRUCTION CONTRACTOR" is the firm hired by the CITY to construct the PROJECT.

- 1.11 "CONSTRUCTION DOCUMENTS" are the complete set of documents approved by the City for the Work to complete the PROJECT including the Construction Drawings and Specifications as set out in paragraph 3.10.2.
- 1.12 "CONSTRUCTION DRAWINGS AND SPECIFICATIONS" are the documents used to convey the intent of the ARCHITECT for the purposes of constructing the PROJECT.
- 1.13 "DIRECTOR" means the Director of CITY'S Capital Improvements Management Services Department, or his designated project manager identified in the Notice to Proceed.
- 1.14 "ESTIMATED COST OF WORK" means the ARCHITECT's estimate of probable construction costs.
- 1.15 "FINAL COMPENSATION" means the final amounts paid by CITY to ARCHITECT for completed services accepted by the City under this AGREEMENT.
- 1.16 "FINAL PAYMENT" means the final amounts paid by CITY to CONSTRUCTION CONTRACTOR for completed Work under the Construction Documents.
- 1.17 "INVOICE" means written request for compensation from ARCHITECT to City for services completed under this AGREEMENT.
- 1.18 "PROJECT" means the _____ capital improvement/construction development undertaking of CITY..
- 1.19 "PROPOSAL" means the proposal of Services submitted by the Architect in response to the City's Request for Qualifications.
- 1.20 "SCHEDULE OF VALUES" a schedule submitted by the Construction Contractor before the first Application for Payment allocating dollar amounts to various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as Architect may require. This schedule, unless objected to by the Architect, shall be used as the basis for reviewing the Contractor's Applications for Payment.
- 1.21 "SCHEMATIC DESIGN DOCUMENT" shall have the meaning as defined in paragraph 3.9.5 of this Agreement.
- 1.22 "SERVICES" means the services performed by the ARCHITECT as required by Articles III and IV of this AGREEMENT.
- 1.23 "TOTAL COMPENSATION" means the not to exceed amount of this AGREEMENT.
- 1.24 "WORK" means the construction work performed by the CONSTRUCTION CONTRACTOR.

ARTICLE II

ARCHITECT'S RESPONSIBILITIES

- 2.1 The ARCHITECT 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 ARCHITECT in this coordination, the CITY shall make available for the ARCHITECT'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 ARCHITECT. However, any and all such information shall remain the property of the CITY and shall be returned by the ARCHITECT upon termination or completion of the PROJECT or if instructed to do so by the Director.
- 2.2 The ARCHITECT warrants that Services provided by ARCHITECT 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 in Bexar County, Texas.
- 2.3 Unless otherwise required by the CITY, the ARCHITECT shall apply for and assist the CITY in obtaining building 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 ARCHITECT will provide the CITY reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by the ARCHITECT pursuant to other provisions of the AGREEMENT, and shall appear on behalf of the CITY at up to three meetings with government but the ARCHITECT 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.
- 2.4 The ARCHITECT shall be represented by a registered professional ARCHITECT or Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the PROJECT, including but not limited to scope meetings, review meetings, pre-bid meetings, and pre-construction meetings, and other meetings as required by the PROJECT.
- 2.5 The ARCHITECT shall prepare Change Orders and Field Work Directives, and, with concurrence of the CITY, 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 Construction Contractor shall carry out promptly and record on the as-built record documents.
- 2.6 The Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Ste. 2-350, Austin, Texas 78701, (512) 305-9000 and/or Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 4407723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.
- 2.7 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of ARCHITECT, its employees, associates, agents or sub-consultants for the accuracy and competency of their designs, drawings, specifications or other documents and Services; 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 ARCHITECT, its employees, sub-consultants, and agents.

- 2.8 The ARCHITECT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the ARCHITECT 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 XII.

ARTICLE III

BASIC SERVICES

- 3.1 The ARCHITECT shall not commence performance of any Services on this PROJECT until being thoroughly briefed on the scope of the PROJECT and being notified in writing to proceed. The scope of the PROJECT and the ARCHITECT'S Services required shall be dependent on the ARCHITECT'S review of the CITY'S criteria and the development of a Proposal by the ARCHITECT to define the Services based on this AGREEMENT and a complete understanding of the goals of the CITY for this PROJECT. Should the goals of the PROJECT subsequently change, either the ARCHITECT or the CITY may request a review of the anticipated Services, with an appropriate adjustment in compensation.
- 3.2 The ARCHITECT shall review laws, codes, and regulations applicable to the ARCHITECT'S services. ARCHITECT shall be responsible for registering the Project with the Department of Licensing & Regulation, Architectural Barriers, and obtaining all reviews, inspections and approvals of Construction Documents required to comply with all state and federal handicapped and Americans with Disabilities Act ("ADA") requirements. ARCHITECT shall also be responsible for ensuring that all facilities which have been constructed in accordance with the Construction Documents created under this Agreement comply with all state and federal handicapped and Americans with Disabilities Act ("ADA") requirements.
- 3.3 The ARCHITECT shall render the professional services described in this ARTICLE III that are necessary for the development of the PROJECT to Substantial Completion, including Construction Drawings and Specifications in phases as required, construction services, any special and general conditions, and instructions to bidders as acceptable to the Director and subject to other provisions of this AGREEMENT.
- 3.4 The ARCHITECT will advise and consult with the CITY. The CITY'S instruction to the CONSTRUCTION CONTRACTOR may be issued through the ARCHITECT but the CITY reserves the right to issue instructions directly to the CONSTRUCTION CONTRACTOR through other designated CITY representatives. CONSTRUCTION CONTRACTOR understands that CITY may modify the authority of the ARCHITECT as provided in the terms of its contract relationship with the ARCHITECT, and the Director shall, in such event, be vested with powers formerly exercised by such ARCHITECT, 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 ARCHITECT, nor shall the ARCHITECT be deemed to have a legal relationship with the CONSTRUCTION CONTRACTOR.
- 3.5 The ARCHITECT 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 in the Work. However, the ARCHITECT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

- 3.6 The ARCHITECT 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 CONSTRUCTION CONTRACTOR'S rights and responsibilities under the CONTRACT DOCUMENTS. The ARCHITECT'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.
- 3.7 The ARCHITECT shall coordinate its services with those services provided by the CITY and the CITY'S Consultants. The ARCHITECT shall be entitled to rely on the completeness of services and information furnished by the CITY and the CITY'S Consultants.
- 3.8 The ARCHITECT shall manage the ARCHITECT'S services, consult with the CITY, research applicable design criteria, attend PROJECT meetings, communicate with members of the PROJECT team and report progress to the CITY. Additionally, Architect shall attend all public hearings, presentations, council meetings, or other official or public meeting concerning the Project as requested by City. All PROJECT meetings and a total of 3 public hearings, presentations, council meetings, or other official or public meetings shall be included in basic service. Any additional public hearings, presentations, council meetings, or other official or public meeting shall be considered Additional Services as described in Article IV.
- 3.9 SCHEMATIC DESIGN PHASE SERVICES
- 3.9.1 The ARCHITECT shall prepare a preliminary evaluation of the CITY'S program, schedule, budget for the Estimated Cost of the Work, Project site, and the proposed procurement or delivery method and other initial information, each in terms of the other, to ascertain the requirements of the PROJECT. The ARCHITECT shall notify the CITY of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the PROJECT.
- 3.9.2 The ARCHITECT shall present its preliminary evaluation to the CITY and shall present to the CITY alternative approaches to design and construction of the PROJECT. The ARCHITECT shall consider environmentally responsible and sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the CITY'S program, schedule and budget. The ARCHITECT shall meet the City's requirements of the PROJECT as set out in this Agreement.
- 3.9.3 The ARCHITECT shall consider the value of alternative materials, building system and equipment, together with other considerations based on program and aesthetics in developing a design for the PROJECT that is consistent with the CITY'S program, schedule and budget for the Estimated Cost of the Work.
- 3.9.4 Based on the PROJECT'S requirements, the ARCHITECT shall prepare and present for the CITY'S approval a preliminary design illustrating the scale and relationship of the PROJECT components.
- 3.9.5 Based on the CITY'S approval of the preliminary design, the ARCHITECT shall prepare Schematic Design Documents for the CITY'S approval. Schematic Design Documents means the drawings and other documents including a site plan incorporating the site survey issued by the CITY, preliminary building floor plans, preliminary sections and elevations for all sides of the building, systems evaluations for structural and Mechanical, Electrical and Plumbing ("MEP") solutions. The Schematic Design Documents may include some combination of study models, perspective sketches, or digital modeling.

Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

- 3.9.6 The ARCHITECT shall submit the Schematic Design Documents to the Historical Design Review Commission (HDRC) for initial schematic approval prior City's acceptance of the Schematic Design.
- 3.9.7 The ARCHITECT shall submit to the CITY an estimate of the Estimated Cost of Work prepared in accordance with ARTICLE V.
- 3.9.8 The ARCHITECT shall submit the Schematic Design Documents to the CITY, and request the CITY'S approval. The ARCHITECT shall submit two full size and two half size sets of Schematic Design Documents, two sets of any reports, and the Estimated Cost of Work. The Architect shall submit an evaluation and comparison of the Estimated Cost of Work to the CITY'S budget and studies as required. All models and documents shall also be provided in electronic format.

3.10 DESIGN DEVELOPMENT PHASE SERVICES

- 3.10.1 After CITY'S written approval of the Schematic Design Documents, and on the Directors written authorization of any adjustments in the PROJECT'S requirements and the budget for the Estimated Cost of the Work, the ARCHITECT shall prepare Design Development Documents for the CITY'S approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including well defined floor plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the PROJECT as to civil, structural, architectural, mechanical, plumbing and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality level.
- 3.10.2 The ARCHITECT shall submit Design Development Documents to the CITY, and request the CITY'S approval signature. The ARCHITECT shall submit to City two full size and two half size sets of Design Development Documents, two sets of any reports, and an Estimated Cost of Work. The Architect shall submit an evaluation and comparison of the Estimated Cost of Work to the CITY'S budget and studies as required or as requested by the City. All models and documents shall also be provided in electronic format.
- 3.10.3 Upon approval of the completed Design Development Documents, the ARCHITECT shall prepare such bidding document as requested by the CITY to include, but not limited to:
 - Bidding and procurement information that describes the time, place and requirements for bids or proposal forms.
 - Form of AGREEMENT between the CITY and CONSTRUCTION CONTRACTOR.
 - Conditions of the Construction Contract and General, Supplementary and other Conditions.
 - ARCHITECT shall also compile a PROJECT manual that includes the Table of Contents and Specifications with CSI Format Division 1 through 32 as required by the scope of work and the General, Supplementary and other Conditions of the Construction Contract and may include bidding requirements and sample forms.
- 3.10.4 The ARCHITECT shall update the Estimated Cost of Work and the associated evaluation and comparison to the CITY'S budget and submit with the Design Development Drawings, Specifications and Reports.

3.11 CONSTRUCTION DOCUMENTS PHASE SERVICES

- 3.11.1 Following the CITY'S written approval of Design Development Documents, and on the CITY'S written authorization of any adjustments in the PROJECT requirements and the budget for the Estimated Cost of Work, the ARCHITECT shall prepare Construction Documents for the CITY'S approval.
- 3.11.2 The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The CITY and ARCHITECT acknowledge that in order to construct the Work the CONSTRUCTION CONTRACTOR will provide additional information, including shop drawings, product data, samples and other similar submittals, which the ARCHITECT shall review, evaluate and make recommendation.
- 3.11.3 The ARCHITECT shall comply with and incorporate into the Construction Documents all requirements of the governmental authorities having jurisdiction over the PROJECT including, but not limited to, the Texas Commission on Environmental Quality (TCEQ), San Antonio Water Systems (SAWS) and CPS Energy.
- 3.11.4 The ARCHITECT shall submit the Construction Drawings to the CITY for review and approval at the 50%, 95%, and 100% stage of completion of the Construction Drawings. ARCHITECT shall include an updated Estimated Cost of Work with each of the aforementioned submittals and take any action required under ARTICLE VI.
- 3.11.5 The ARCHITECT shall meet with the HDRC Officer and receive HDRC final approval of Construction Documents.
- 3.11.6 Prior to the actual printing of the final Construction Documents (plans and specifications) one (1) advance copy shall be submitted to the CITY. Upon review and approval of said documents, the ARCHITECT shall provide and submit same to the CITY as follows:
 - 3.11.7.1 ARCHITECT shall submit three (3) sets of Plans and Specifications addressed to the CITY Architect's Office; for the CITY Architect, Project Manager and Building Maintenance Department.
 - 3.11.7.2 ARCHITECT shall deliver one (1) set of Plans and Specifications in electronic format (PDF format) to the CITY'S Plans and Records Office, CIMS, Contract Services.
 - 3.11.7.3 The ARCHITECT shall submit the Building Permit Application, signed and sealed Construction Document Drawings, Specifications, special inspection letter and copies of the site survey, geotechnical report, Environmental Clean Letter, and any other documents required, to the CITY of San Antonio Planning and Development Services Department for the building permit. The ARCHITECT shall respond to questions from the Planning and Development Services Department and shall be responsible for receipt of a Building Permit. Permit fees shall be paid by the CITY. Any additional review fees required due to improper submittal will be the responsibility of the ARCHITECT.

3.12 BIDDING OR NEGOTIATION PHASE SERVICES

- 3.12.1 Following the CITY'S written approval of the Construction Documents, the ARCHITECT shall assist the CITY in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids and proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing Contracts for Construction.
- 3.12.2 The ARCHITECT shall assist the CITY in bidding the PROJECT by:
- Procuring the reproduction of Bidding Documents for distribution to prospective bidders.
 - Distributing the Bidding Documents to prospective bidders, requesting their return upon Completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders.
 - Participating in a pre-bid conference for prospective bidders.
 - Preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.
- 3.12.3 The ARCHITECT shall consider and evaluate requests for product and material substitutions, if the Bidding Documents permit substitutions, and shall recommend approval or rejection of substitutions to the City. If City approves the Architect's recommendation, the Architect shall prepare addenda identifying approved substitutions and provide such addenda to distribute to prospective bidders and to the City for distribution on the City's Website. All requests for product and material substitutions must be submitted in writing to the Architect a minimum of 10 calendar days prior to the proposed bid opening. If approved, an Addendum outlining the acceptance of the substitution will be prepared and distributed no less than 3 working days prior to the bid opening. At no time will substitutions be allowed following the bid opening unless extenuating circumstances arise and all parties are in agreement that the substitution is necessary and for the betterment of the overall project.

3.13 ALTERNATIVE DELIVERY METHODS

- 3.13.1 If the City decides to utilize an alternative delivery method then, following the CITY'S approval of the Construction Documents, the ARCHITECT shall assist the CITY in the following:
- Obtaining proposals for Construction Manager at Risk solicitations or Competitive Sealed Proposals.
 - Confirming responsiveness of proposals.
 - Determining the successful proposal.
 - Awarding and preparing contracts for construction.
- 3.13.2 The ARCHITECT shall consider and evaluate requests for product and material substitutions, if the Construction Documents permit substitutions, and shall recommend approval or rejection of substitutions to the City. If City approves the Architect's recommendation, the Architect shall prepare addenda identifying approved substitutions and provide such addenda to distribute to prospective bidders and to the City for distribution on the City's Website. All requests for product and material substitutions must be submitted in writing to the Architect a minimum of 10 calendar days prior to the proposed bid opening. If approved, an Addendum outlining the acceptance of the substitution will be prepared and distributed no less than 3 working days prior to the bid opening. At no time will substitutions be allowed following the bid opening unless extenuating circumstances arise and all parties are in agreement that the substitution is necessary and for the betterment of the overall Project.

3.14 CONSTRUCTION PHASE SERVICES

- 3.14.1 The ARCHITECT shall provide administration of the contract between the CITY and the CONSTRUCTION CONTRACTOR as set forth in this AGREEMENT and the General Conditions of the Construction Contract.
- 3.14.2 Upon written request of the CONSTRUCTION CONTRACTOR the ARCHITECT will issue its interpretation of the requirements of the plans and specifications. The ARCHITECT'S response to such requests will be made in writing within agreed upon time limits developed by the CONSTRUCTION CONTRACTOR and the ARCHITECT and approved by the CITY at the beginning of construction. If no agreement is made concerning the time within which interpretation is required by the ARCHITECT, then such interpretation shall be provided by the Architect within 15 days after written request is made.
- 3.14.3 Interpretations and decisions of the ARCHITECT 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.
- 3.14.4 The ARCHITECT'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.
- 3.14.5 The ARCHITECT shall advise and consult with the CITY during Construction Phase Services. The ARCHITECT shall have authority to act on behalf of the CITY only to the extent provided in this AGREEMENT. The ARCHITECT shall not have control over, charge of, responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the ARCHITECT be responsible for the CONSTRUCTION CONTRACTOR'S failure to perform the Work in accordance with the Work requirements of the CONTRACT DOCUMENTS. The ARCHITECT shall be responsible for the ARCHITECT'S negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions for the CONSTRUCTION CONTRACTOR or of any other person's or entities performing portions of the Work.
- 3.14.6 ARCHITECT shall provide assistance with warranty issues for the twelve month warranty period following substantial completion on an as needed basis.
- 3.14.7 Prior to the expiration of the one year warranty period, Architect shall accompany the City and Construction Contractor on reinspection of the Project. Architect shall prepare and submit to City a report listing deficiencies not caused by the City or by the use of the Project which are observed during the reinspection.
- 3.14.6 ARCHITECT'S responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the City accepts the corrections of the deficiencies identified during the reinspection and listed in the report.
- 3.14.7 The ARCHITECT shall consider and evaluate requests for product and material substitutions and shall recommend approval or rejection of substitutions to the City. At no time will substitutions be allowed unless extenuating circumstances arise and all parties are in agreement that the substitution is necessary and for the betterment of the overall Project.

3.15 EVALUATION OF THE WORK

- 3.15.1 The architect shall observe the initial start-up of the PROJECT and the necessary performance tests required by the Specifications of any machinery or equipment installed in and made a part of the PROJECT. The ARCHITECT shall advise the CITY if, in its opinion, the machinery or equipment is not operating properly. Review and approve in concert with the CITY equipment required to be submitted and tested by the Plans and Specifications for compliance with PROJECT design and performance specifications. The ARCHITECT shall review the CONSTRUCTION CONTRACTOR'S building construction layout, specifically foundation elevations.
- 3.15.2 The ARCHITECT agrees to visit the site in intervals appropriate to the stage of construction or as otherwise agreed by the Parties in writing to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the CONTRACT DOCUMENTS. Included in this scope is the review of the Construction Contractor's Record Drawings that must be maintained continuously during the construction process. However, the ARCHITECT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on site observations as a professional ARCHITECT, the ARCHITECT should keep the CITY informed of the progress and quality of each major division of the Work and shall endeavor to guard the CITY against defects and deficiencies in the Work of the CONSTRUCTION CONTRACTOR. The ARCHITECT shall provide the CITY with a Memorandum Record of each jobsite visit and shall submit a monthly report to the CITY in electronic format and by email. The monthly report shall include the status of the PROJECT, and information to indicate the progress and performance of the CONSTRUCTION CONTRACTOR in accordance with the CONTRACT DOCUMENTS.
- 3.15.3 ARCHITECT shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the CONSTRUCTION CONTRACTOR or the safety precautions and programs incident to the Work of the CONSTRUCTION CONTRACTOR.
- 3.15.4 The ARCHITECT'S efforts will be directed towards providing assurance for the CITY that the completed PROJECT will conform to the Plans and Specifications. The ARCHITECT shall not be responsible for the failure of the CONSTRUCTION CONTRACTOR to perform the construction Work in accordance with the Plans and Specifications and the CONSTRUCTION CONTRACTOR'S contract. However, the ARCHITECT shall report to the CITY any deficiencies in the Work actually detected by the ARCHITECT.
- 3.15.5 Submittals: ARCHITECT shall review and take other appropriate action (approve with modifications, reject, etc.) the CONSTRUCTION CONTRACTOR'S submittals such as shop drawings, product data and samples, but only for conformance with the design concept of the PROJECT and compliance with the information given in the CONTRACT DOCUMENTS. Such action shall be taken with reasonable promptness so as to cause no delay. Such reviews and approvals, or other actions, shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and program incident thereto. The approval of a specific item shall not indicate approval of an assembly of which the item is a component. If no agreement is made concerning the time within which review and appropriate action is required by the ARCHITECT, then such action shall be provided by the Architect within 15 days after written request is made.
- 3.15.6 ARCHITECT shall provide, receive and review certificates of inspections, testing (to include field, laboratory, shop and mill testing of materials) and approvals required by laws, rules, regulations, ordinances, codes, orders or the CONTRACT DOCUMENTS to determine generally that the results certified substantially comply with the CONTRACT DOCUMENTS which are submitted to him. The ARCHITECT shall also recommend to

the CITY special inspection or testing when deemed necessary to assure that materials, products, assemblages and equipment conform to the design concept and the CONTRACT DOCUMENTS.

- 3.15.7 ARCHITECT shall participate in a "Substantial Completion" and a "final" inspection of the PROJECT to observe any apparent defects in the completed construction, assist the CITY in consultation and discussions with the CONSTRUCTION CONTRACTOR(s) concerning such deficiencies, and make recommendations as to replacements or corrections of the defective Work.
- 3.15.8 ARCHITECT shall develop, at the request of the CITY, any changes, alterations or modifications to the PROJECT, which appear to be advisable and feasible, and in the best interest of the CITY. Such alterations shall appear on or be attached to the CITY'S form "Change Order Request". The ARCHITECT shall obtain the CONSTRUCTION CONTRACTOR'S acceptance of the proposed alteration prior to submitting it to the CITY for its approval. The ARCHITECT shall not authorize the CONSTRUCTION CONTRACTOR to perform any additional Work prior to receipt of the CITY'S written approval of the "Change Order Request".
- 3.15.9 Except as otherwise provided in the Supplementary or Special Conditions, the ARCHITECT and the CITY will have authority to reject Work that does not conform to the Construction Documents. Whenever the ARCHITECT or CITY considers it necessary or advisable, the ARCHITECT with written approval of the City may require inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the ARCHITECT 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 ARCHITECT or the CITY to require testing or inspection not otherwise specified in the Construction Contract Documents by CONSTRUCTION CONTRACTOR, subcontractors, suppliers, agents or employees, or other persons or entities.

3.16 CERTIFICATES FOR PAYMENT TO CONSTRUCTION CONTRACTOR

- 3.16.1 Before the Construction Contractor submits its first Application for Payment during the construction phase, the ARCHITECT shall receive from the CONSTRUCTION CONTRACTOR a Schedule of Values allocated to various portions of the Work prepared in such form and supported by such data to substantiate accuracy as the ARCHITECT may require. This schedule shall be used as the basis for reviewing the ARCHITECT'S Invoice during the construction phase.
- 3.16.2 Construction Contractor will submit monthly Applications for Payment to the Architect. The Architect will determine the amounts due to the CONSTRUCTION CONTRACTOR based on observations at the site and on evaluations of the CONSTRUCTION CONTRACTOR'S Monthly Application for Payments (and Final Application for Payment) and issue a Certificate of Payment to the CITY.
- 3.16.3 The issuance of a Certificate For Payment shall constitute a representation by the ARCHITECT to the CITY based on the ARCHITECT'S observations at the site as provided herein and in the data comprising the CONSTRUCTION CONTRACTOR'S Monthly Application for Payment (and Final Application for Payment), that the Work has progressed to the point indicated; that to the best of the ARCHITECT'S knowledge, information and belief, the quality of Work is in accordance with the CONTRACT DOCUMENTS, and to any specific qualifications stated in the Certification For Payment; and that the CONSTRUCTION CONTRACTOR is entitled to payment in the amount recommended. The issuance of a Certification for Payment will not be a representation that the ARCHITECT 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 CITY to substantiate the CONSTRUCTION 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.

3.16.4 The ARCHITECT will, within three (3) days after receipt of the CONSTRUCTION CONTRACTOR'S Application for Payment, either issue to the CITY a Certification for Payment for such amount as the ARCHITECT determines is properly due, or notify the CITY in writing of the ARCHITECT'S reasons for withholding approval in whole or in part.

3.16.5 When the Work is found to be substantially complete, the ARCHITECT shall inform the CITY about the balance of the Contract Sum remaining to be paid the CONSTRUCTION CONTRACTOR, including the amount to be retained from the Contract Sum, if any, for final completion of the Work.

3.16.6 The ARCHITECT may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the CITY if, in the ARCHITECT'S opinion, the representations to the CITY required by Section 3.15 cannot be made. If the ARCHITECT is unable to approve payment in the amount of the Application, the ARCHITECT will notify the CITY as provided in Section 3.15. If the CONSTRUCTION CONTRACTOR and the ARCHITECT cannot agree on a revised amount, the ARCHITECT will promptly issue a Certificate for Payment for the amount for which the ARCHITECT is able to make such representations to the CITY. The ARCHITECT may also withhold a Certificate for Payment, because of subsequently discovered evidence, may modify the whole or a part of a Certificate for Payment to such extent as may be necessary, in the ARCHITECT'S opinion, to protect the CITY from loss for which the CONSTRUCTION CONTRACTOR is responsible, including loss resulting from acts and omissions described below:

3.16.6.1 Defective Work not remedied.

3.16.6.2 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 CITY is provided by the CONSTRUCTION CONTRACTOR.

3.16.6.3 Failure of the CONSTRUCTION CONTRACTOR to make payments properly to the subcontractor and/or material providers; or

3.16.6.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Construction Contract sum and CONSTRUCTION CONTRACTOR has failed to provide CITY adequate assurance of its continued performance within a reasonable time after demand.

3.16.7.5 Damage to the CITY or another CONSTRUCTION CONTRACTOR.

3.16.6.6 Reasonable evidence that the Work will not be completed within the Construction Contract time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

3.16.6.7 Persistent failure by the CONSTRUCTION CONTRACTOR to carry out the Work in accordance with the CONTRACT DOCUMENTS.

- 3.16.7 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.

3.17 PROJECT COMPLETION

- 3.17.1 The ARCHITECT shall conduct inspections to determine the date or dates of Substantial Completion; issue Certificates of Substantial Completion; receive from the CONSTRUCTION CONTRACTOR and forward to the CITY, for CITY'S review and records, written warranties and related documents required by CONTRACT DOCUMENTS and assembled by the CONSTRUCTION CONTRACTOR.
- 3.17.2 When all of the Work is finally completed and ready for final inspection, the ARCHITECT shall notify the CITY thereof in writing. Thereupon, the ARCHITECT and CITY will make final inspection of the Work and, if the Work is complete in full accordance with this Agreement and this Agreement has been fully performed, the ARCHITECT will promptly issue a final Certificate for Payment certifying to the City that the PROJECT is complete and that the CONSTRUCTION CONTRACTOR is entitled to the remainder of the unpaid Construction Contract Sum, less any amount withheld pursuant to this Agreement. If the ARCHITECT is unable to issue its final Certificate of Payment for reasons for which the ARCHITECT is responsible and is required to repeat its final inspection of the Work, the ARCHITECT shall bear the cost of such repeat final inspection(s). The ARCHITECT shall review the close out documents.
- 3.17.3 After completion of the Work, and before final payment to the CONSTRUCTION CONTRACTOR, it shall be the ARCHITECTS responsibility to recommend to the CITY that the CONSTRUCTION CONTRACTOR receive final payment from the CITY based on the completion of all close-out activities including the delivery of "Record Drawings" by the CONSTRUCTION CONTRACTOR, who has control of the Work and who is in a position to know how the PROJECT was constructed. The ARCHITECT shall not be held liable for the information supplied it by the CONSTRUCTION CONTRACTOR and/or CITY.
- 3.17.4 The CITY will require the CONSTRUCTION CONTRACTOR to submit to the ARCHITECT who shall review and deliver to the CITY all manufacturer's warranties or bonds, equipment maintenance and operating manuals, and similar data on materials and equipment incorporated in the PROJECT as required by the CONTRACT DOCUMENTS and shall attend and monitor the CONSTRUCTION CONTRACTOR'S commissioning and training of systems and equipment as applicable.
- 3.17.5 ARCHITECT shall forward to the CITY the following information received from the CONSTRUCTION CONTRACTOR; (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY.

ARTICLE IV

ADDITIONAL SERVICES

- 4.1 Additional Services are not included in Basic Services but may be required for the delivery of the PROJECT. All Additional Services to include the cost thereof shall be listed in Exhibit C and if such Additional Services are to be performed by subcontractors or subconsultants, then Architect shall list such subcontractors or subconsultants to include the legal names, addresses and phone numbers. The cost of all Additional Services shall be included in the not to exceed Total Compensation for this Contract.

ARTICLE V

FURTHER SERVICES REQUIRING AMENDMENT

- 5.1 If during the performance of the Project, further services are required, the ARCHITECT shall notify the CITY in a timely manner to explain the reasons for the further services. Any further services will be negotiated and added to this Agreement by a written amendment executed by both parties.
- 5.2 Further services may be provided after the execution of this Agreement without nullifying the Agreement. If further services are required to redraw or redesign caused by the CITY's decision to change the scope or redirect the goals after drawings have been completed, the ARCHITECT shall agree to work on an hourly basis to complete the work. If the CITY should add scope and increase the work of the ARCHITECT there shall be an agreement to the change in scope and a new fee agreed to. Compensation for these services shall be added to the Final Compensation and paid to the ARCHITECT after a written amendment incorporating such services into the Agreement has been executed by both parties.
- 5.3 Any further services will be provided in accordance with the labor rates set out in Exhibit A of this Agreement on a not to exceed basis set out in a written amendment approving such services.

ARTICLE VI

ESTIMATED COST OF WORK

- 6.1 The Estimated Cost of Work shall be the total estimated cost for the PROJECT to construct all elements of the PROJECT designed or specified by the ARCHITECT and must include the CITY'S General Conditions for Construction Costs, overhead and profit but not the Cost for Design or for land or CITY'S equipment. The format of the Estimated Cost of Work shall follow the divisions of the specifications and show contingency, general conditions, insurances and bond costs and profit and overhead at the end.
- 6.2 The CITY'S budget for the Estimated Cost of Work is provided in this AGREEMENT and may be adjusted throughout the PROJECT as agreed upon by the CITY. It is the responsibility of the ARCHITECT to professionally evaluate the CITY'S budget and recommend scope changes required to meet the budget. If the ARCHITECT'S consideration of the CITY'S budget is not challenged during the schematic phase of design, it is understood that the budget is approved by the ARCHITECT to be correct to cover financial requirements of the Estimated Cost of Work.
- 6.3 Since the ARCHITECT has no control over the cost of labor, materials or equipment or over the CONSTRUCTION CONTRACTOR'S methods of determining prices, or over

competitive bidding or market conditions, ARCHITECT'S opinions of probable PROJECT Cost or Construction Cost provided for herein are to be made on the basis of ARCHITECT'S experience and qualifications and represent ARCHITECT'S best judgment as a design professional familiar with the construction industry but the ARCHITECT cannot and does not guarantee that proposals, bids or the construction cost will not vary from the Estimated Cost of Work prepared by ARCHITECT.

- 6.4 The ARCHITECT shall be permitted to include in the Estimated Cost of Work contingencies for price escalation early in the PROJECT and to identify Design Elements and systems that will deliver the PROJECT within the CITY'S budget. If at the end of each phase of Work the ARCHITECT'S Estimated Cost of Work is higher than the CITY'S budget, the ARCHITECT shall at their own cost revise the documents to bring them into budget unless a written agreement from the CITY approves a budget change.

ARTICLE VII

REVISIONS TO DRAWINGS AND SPECIFICATIONS

- 7.1 The ARCHITECT 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 the PROJECT. After the written approval by the City of drawings, reports or other documents and specifications at the end of each phase of Services, any revisions, additions, or other modifications made at the CITY'S request which involve further services and expenses to the ARCHITECT shall require an amendment to incorporate such services and associated compensation into this Agreement based on Rates set forth in Exhibit A..
- 7.2 The Director may require the ARCHITECT to revise the CONSTRUCTION DOCUMENTS Phase drawings, reports or other documents and specifications, at no cost to the CITY, if the lowest bona fide bid received for this Project is in excess of ten percent (10%) of the Estimated Cost of Work as submitted by the ARCHITECT, and accepted by the CITY.

ARTICLE VIII

TIME AND PERIOD OF SERVICE

- 8.1 Prior to commencement of any Services, ARCHITECT shall provide CITY with 1) Service Fees and Reimbursables, Exhibit A, which shall list labor categories and associated hourly rates and reimbursable cost and expenses required for completion of the Services, and 2) a Schedule of Project Services, Exhibit B, which shall detail the various service phases described in Articles III and IV with the expected time frame for delivery and shall delineated all services to be performed during each phase, the total estimated time and labor by Architect and all subcontractors required for the completion of each phase and the Additional Services and Reimbursables for each phase.
- 8.2 Time is of the essence of this AGREEMENT. The ARCHITECT shall perform and complete its obligations for the Services under ARTICLE III "Scope of Basic Service", and ARTICLE IV "Additional Services" of this AGREEMENT in a prompt and continuous manner so as to not delay the development of the design and CONSTRUCTIONS DOCUMENTS and so as to not delay the Construction of the PROJECT in accordance with the schedules approved by the CITY. If, upon review of any phase of Services the City determines, corrections, modifications, alterations, or additions are required by the ARCHITECT, the ARCHITECT shall complete these corrections, modifications, alterations, or additions before that Phase is approved by the City.

- 8.3 The ARCHITECT shall not proceed with the next appropriate Phase of Services without written authorization from the Director. The CITY may elect to discontinue the ARCHITECT'S Services for any reason. However, if circumstance dictates, the Director may make adjustments to the scope of the ARCHITECT'S obligations at any time to achieve the required design.
- 8.4 The ARCHITECT 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 ARCHITECT'S reasonable control. Within ten (10) days from the occurrence of any event for which time for performance by ARCHITECT shall be significantly extended under this provision, ARCHITECT 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 ARCHITECT is responsible for the need for extended time, the CITY shall have the right to make a CLAIM as provided in this AGREEMENT.

ARTICLE IX INSURANCE REQUIREMENTS

- 9.1 Prior to the commencement of any Services under this Agreement, the ARCHITECT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Capital Improvement Management Services Department, which shall be clearly labeled "Project Name" 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/Public Works Department/Contract Services Department. No officer or employee other than the City's Risk Manager shall have authority to waive this requirement.
- 9.2 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 request modification of 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.
- 9.3 An ARCHITECT's financial integrity is of interest to the CITY. Therefore, subject to the ARCHITECT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the ARCHITECT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the ARCHITECT's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved 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:

INSURANCE REQUIREMENTS	
1. Worker's Compensation ** Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General Broad Form (Public) Liability Insurance to include coverage for the following: a. Premises Operations b. Independent contractors* c. Products/completed operations d. Personal Injury e. Contractual Liability f. Fire legal liability*	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its Equivalent in Umbrella or Excess Liability Coverage
3. 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
4. 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 to the extent caused by any negligent act, error or omission in the performance of professional services.
*If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

9.4 The CITY may request and without expense to CITY, to inspect copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY.

9.5 The ARCHITECT 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, 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;
- To the extent not inconsistent with the requirements of the issuing insurance carrier, 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 if such endorsement is permitted by law and regulations;
- 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 or non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

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

- 9.7 In addition to any other remedies the CITY may have upon the ARCHITECT'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 ARCHITECT to stop performing services hereunder and/or withhold any payment(s) which become due to the ARCHITECT hereunder until the ARCHITECT demonstrates compliance with the requirements hereof.
- 9.8 Nothing herein contained shall be construed as limiting in any way the extent to which the ARCHITECT may be held responsible for payments of damages to persons or property resulting from the ARCHITECT's or its sub-consultant's performance of the services covered under this Agreement.
- 9.9 It is agreed that the ARCHITECT'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.
- 9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

ARTICLE X

CITY'S RESPONSIBILITIES

- 10.1 The Director or the representative appointed by the Director will act on behalf of, the CITY with respect to the Services 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 ARCHITECT'S services.
- 10.2 The CITY will give prompt written notice to the ARCHITECT whenever the CITY observes or otherwise becomes aware of any defect in the ARCHITECT's Services, in the Work of the CONSTRUCTION CONTRACTOR, or any development that affects the scope or timing of the ARCHITECT's Services.
- 10.3 The CITY reserves the right to contract directly for the services of the geotechnical engineers, surveyors, material testing and special testing of materials as required by the code and CONTRACT DOCUMENTS. In some instances, however, the City may request these services to be managed by the Architect as an ADDITIONAL SERVICE. In most instances, Environmental and hazardous waste testing will be contracted by the CITY.

ARTICLE XI

COMPENSATION

- 11.1 The Total Compensation for all services defined by this AGREEMENT, to include Basic Services, Additional Services and Reimbursables is the not to exceed sum of **AMOUNT IN DOLLARS (\$XXXXXX)**. It is agreed and understood that such amount will constitute full compensation to the ARCHITECT for all Basic Services, Additional Services and Reimbursables. Such amount has been approved and appropriated by the San Antonio City Council for expenditure under this AGREEMENT. Unless, and until the CITY makes further appropriations for any services not included in the Scope of Basic Services, Additional Services and Reimbursables of this AGREEMENT, the obligation of the CITY to the ARCHITECT for Total Compensation in connection with this AGREEMENT cannot and will not exceed such sum of **\$XXXXXX** without further amendment to this AGREEMENT.
- 11.2 The ARCHITECT'S Schedule of Project Services, Exhibit B, shall be used as the basis for reviewing the ARCHITECT'S Invoices. The Schedule shall include all services to be performed for both the design phases and construction administration of the PROJECT and shall also include Additional Services and Reimbursable that make up the Total Compensation.
- 11.2.1 Before the first Invoice, the CITY shall receive from the ARCHITECT a Schedule of Project Services with the expected time frame for delivery and based on the Design Phases as described in Articles III and IV prepared in such form and supported by such data to substantiate its accuracy as the CITY may require. This ARCHITECT'S Schedule shall be used as the basis for reviewing the ARCHITECT'S Invoice during each phase of the Services.
- 11.2.2. The ARCHITECT and the CITY acknowledge the total not to exceed Compensation amount contained in Section 11.1 above has been established predicated upon the not to exceed costs of all Services to be rendered under this AGREEMENT.
- 11.2.3 All Invoices shall be submitted through the CITY'S Program Management Portal. Any changes to the ARCHITECT'S Schedule once approved will be processed and approved as task orders through the portal.
- 11.3 The ARCHITECT warrants that title to all Services covered by the Invoice will pass to the CITY no later than the time of Compensation. The ARCHITECT further warrants that upon submittal of an Invoice, all Services for which Invoices have been previously issued and compensation received from the CITY shall, to the best of the ARCHITECT'S knowledge, information and belief be free and clear of liens, CLAIMS, security interests or encumbrance in favor of the ARCHITECT, or other persons or entities making a CLAIM by reason of having provided labor or services relating to the Work. **ARCHITECT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY COMPENSATION PAID BY THE CITY TO ARCHITECT.**
- 11.4 The ARCHITECT shall, within ten (10) days following receipt of Compensation from the CITY, pay all bills for services performed and furnished by others in connection with the PROJECT and the performance of the Services, and shall, if requested, provide the CITY with evidence of such payment. ARCHITECT'S failure to make payments within such time shall constitute a material breach of this AGREEMENT, unless the ARCHITECT is able to demonstrate to CITY bonafide disputes associated with the unpaid subconsultant and its services. ARCHITECT shall include a provision in each of its subagreements imposing the same payment obligations on the subconsultants as are applicable to the ARCHITECT hereunder, and if the CITY so requests, shall provide copies of such payments by the subconsultants.

- 11.5 The final compensation to be made by the CITY to the ARCHITECT will be payable upon submission of a statement of release with the final Invoice notifying the CITY that there is no further compensation owed to the ARCHITECT by the CITY beyond the final Invoice.
- 11.6 The CITY may withhold compensation to such extent as may be necessary, in the CITY'S opinion, to protect the CITY from damage or loss for which the ARCHITECT is responsible, because of:
- 11.6.1 Delays in the performance of the ARCHITECT'S Services
 - 11.6.2 Third party CLAIMS filed or reasonable evidence indicating probable filing of such CLAIMS unless security acceptable to the CITY is provided by the ARCHITECT
 - 11.6.3 Failure of the ARCHITECT to make payments properly to subconsultants or vendors for labor, materials or equipment
 - 11.6.4 Reasonable evidence that the ARCHITECT's Services cannot be completed for the amount unpaid under this AGREEMENT
 - 11.6.5 Damage to the CITY or the CONSTRUCTION CONTRACTOR
 - 11.6.6 Persistent failure by the ARCHITECT to carry out the performance of its Services in accordance with this AGREEMENT
- 11.7 When the above reasons for withholding are removed or remedied by the ARCHITECT, Compensation of the amount withheld will be made within a reasonable time. The CITY shall not be deemed in default by reason of withholding Compensation as provided for in this Article.
- 11.8 In the event of any dispute(s) between the parties regarding the amount properly compensable for any Phase or as final Compensation, or regarding any amount that may be withheld by the CITY, the ARCHITECT 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 ARCHITECT 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.
- 11.9 ARCHITECT agrees to maintain adequate books, payrolls and records satisfactory to the CITY in connection with any and all Services performed hereunder. ARCHITECT 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. At all reasonable times, CITY and its duly authorized representatives shall have access to all personnel of ARCHITECT and all such books, payrolls and records, and shall have the right to audit same.
- 11.10 The CITY shall have the right to approve any reimbursable expenditure by the ARCHITECT, and shall not pay any expenses that are not agreed to prior to the execution of this AGREEMENT. If Travel expenses are agreed to they shall be reimbursed based on the CITY guidelines for travel. If the ARCHITECT or a subconsultant of the ARCHITECT should make expenditure that is not approved prior to the execution of the AGREEMENT, those costs shall be the responsibility of the ARCHITECT and not the CITY.

- 11.11 Internet-based Project Management Systems. Owner will administer its services through an Internet-Based Management System. In such case, the ARCHITECT shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, Invoices 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.

ARTICLE XII

OWNERSHIP OF DOCUMENTS

- 12.1 All previously owned documents, including the original drawings, estimates, specifications, and all other documents and data by ARCHITECT, will remain the property of the ARCHITECT as instruments of service. However, the ARCHITECT understands and agrees that the CITY shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates, specifications and all other documents and data. Any reuse without specific written verification or adaptation by ARCHITECT will be at CITY'S sole risk and without liability or legal exposure to ARCHITECT.
- 12.2 All completed documents submitted by ARCHITECT for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a Texas registered ARCHITECT/Landscape ARCHITECT licensed to practice in Texas.
- 12.3 The ARCHITECT acknowledges and agrees that upon payment, 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. However, any reuse without specific written verification or adaptation by ARCHITECT will be at CITY'S sole risk and without liability or legal exposure to ARCHITECT.
- 12.4 The ARCHITECT agrees and covenants to protect any and all proprietary rights of the CITY in any materials provided to the ARCHITECT. Such protection of proprietary rights by the ARCHITECT 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 ARCHITECT by the CITY shall not be released to any third party without the written 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.
- 12.5 **THE ARCHITECT 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 ARCHITECT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF THE CITY (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). THE ARCHITECT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND 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.

- 12.6 The ARCHITECT may make copies of any and all documents and items for its files. The ARCHITECT shall have no liability for changes made to or use of the drawings, specifications and other documents by other ARCHITECTS and/or engineers, or other persons, subsequent to the completion of the PROJECT. ARCHITECT shall note ARCHITECT's agreement or disagreement with all changes or modifications on all drawings, specifications and other documents by other ARCHITECT'S and/or engineers or other persons outside of ARCHITECT's control, including electronic copies, prior to the completion of the PROJECT.
- 12.7 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 ARCHITECT. Files in editable electronic media format of text, data, graphics, or other types, (such as .DWG and the REVIT MODEL) that are furnished by the ARCHITECT to the CITY 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. However, any reuse without specific written verification or adaptation by ARCHITECT will be at CITY'S sole risk and without liability or legal exposure to ARCHITECT.
- 12.8 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of ARCHITECT, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by ARCHITECT or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the ARCHITECT 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 ARCHITECT or its suppliers.

ARTICLE XIII

TERMINATION AND/OR SUSPENSION OF WORK

- 13.1 Right of Either Party to Terminate for Default
- 13.1.1 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 **ARTICLE XIII**.
- 13.1.2 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.
- 13.2 The CITY reserves the right to terminate this AGREEMENT for reasons other than substantial failure by the ARCHITECT 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 ARCHITECT is then currently Working, whichever effective termination

date occurs first.

13.3 The CITY reserves the right to suspend this AGREEMENT 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 ARCHITECT.

13.4 The ARCHITECT is hereby given the right to terminate this AGREEMENT in the event such suspension extends for a period in excess of sixty (60) days. ARCHITECT may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the CITY after the expiration of sixty (60) 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.

13.5 Procedures ARCHITECT will follow upon Receipt of Notice of Termination

13.5.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or ARCHITECT immediately takes action to cure a failure to perform under the cure period set out hereinabove, ARCHITECT 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 ARCHITECT has successfully cured a failure to perform) the ARCHITECT 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.

13.5.2 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 payment of final Compensation.

13.5.3 Upon the above conditions being met, the CITY shall promptly compensate the ARCHITECT 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 previously paid Compensation.

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

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

13.6 Procedures ARCHITECT to Follow upon Receipt of Notice of Suspension

- 13.6.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the ARCHITECT 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.
- 13.6.2 ARCHITECT shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
- 13.6.3 Copies of all completed or partially completed designs, plans and specifications and models 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 ARCHITECT until such time as CITY may exercise the right to terminate.
- 13.6.4 In the event that ARCHITECT 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 ARCHITECT'S notice of termination, ARCHITECT 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.
- 13.6.5 Any documents prepared in association with this Agreement shall be delivered to the CITY as a pre- condition to final payment.
- 13.6.6 Upon the above conditions being met, the CITY shall promptly compensate the ARCHITECT 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 previously paid Compensation.
- 13.6.7 The CITY, as a public entity, has a duty to document the expenditure of public funds. ARCHITECT acknowledges this duty on the part of the CITY. To this end, ARCHITECT 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 ARCHITECT of any portion of the fee for which ARCHITECT did not supply such necessary statements and/or documents.

ARTICLE XIV

INDEMNIFICATION

- 14.1 **The ARCHITECT, whose work product and services are the subject of this AGREEMENT for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all CLAIMS by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable 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 ARCHITECT'S NEGLIGENT ACT, ERROR, OR OMISSION OF ARCHITECT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, ARCHITECT OR SUBARCHITECT OF ARCHITECT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND**

REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for in this paragraph shall not apply to any liability resulting from the NEGLIGENCE of CITY, its officers or employees, in instances where such NEGLIGENCE causes personal injury, death, or property damage. IN THE EVENT ARCHITECT 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.

- 14.2 The ARCHITECT shall advise the CITY in writing within 24 hours of any CLAIM or demand against the CITY or the ARCHITECT, known to the ARCHITECT, related to or arising out of the ARCHITECT'S activities under this AGREEMENT.
- 14.3 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.

ARTICLE XV CLAIMS AND DISPUTES

- 15.1 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, and 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 CITY and ARCHITECT arising out of or relating to the AGREEMENT. CLAIMS must be initiated by written notice. Every CLAIM of the ARCHITECT, 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 ARCHITECT by his signature) of the ARCHITECT, verifying the truth and accuracy of the CLAIM. The responsibility to substantiate CLAIMS shall rest with the party making the CLAIM.
- 15.2 Time Limit on CLAIMS. CLAIMS by the ARCHITECT or by the CITY must be initiated within 21 days after occurrence of the event giving rise to such CLAIM. CLAIMS by the ARCHITECT must be initiated by written notice to the CITY. CLAIMS by the CITY must be initiated by written notice to the ARCHITECT.
- 15.3 Continuing Contract Performance. Pending final resolution of a CLAIM except as otherwise agreed in writing, the ARCHITECT shall proceed diligently with performance of the AGREEMENT and the CITY shall continue to make payments in accordance with the AGREEMENT.
- 15.4 CLAIMS for Additional Time. If the ARCHITECT wishes to make CLAIM for an increase in the time for performance, written notice as provided in this Section 15 shall be given. The ARCHITECT'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.
- 15.5 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 ARCHITECT and to CLAIMS by the CITY:

- 15.5.1 No consequential damages will be allowed.
- 14.5.2 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.
- 14.5.3 No profit will be allowed on any damage CLAIM.
- 15.6 **No Waiver of Governmental Immunity. NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE THE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**
- 15.7 Alternative Dispute Resolution
- 15.7.1 Continuation of Services 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.
- 15.7.2 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.
- 15.8 Mediation.
- 15.8.1 In the event that the CITY or the ARCHITECT 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.
- 15.8.2 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.
- 15.8.3 In the event the CITY and the ARCHITECT 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.
- 15.8.4 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 consent to suit.

ARTICLE XVI

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s International and Economic Development (IEDD) 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.

B. 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” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover 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, the City accepts any firm that is certified by local government entities and 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.

Commercially Useful Function – an 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 must also 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 is actually performing and 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 CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR 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, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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.”

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.

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 (SAMSAs), 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.

San Antonio Metropolitan Statistical Area (SAMSAs) – 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.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

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 International and Economic Development Department (IEDD) 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 IEDD 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.

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 IEDD Director or designee.

C. 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.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative 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 Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. **CONTRACTOR agrees to subcontract at least 30% of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).** The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

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 attached and 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.

E. 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).

ARTICLE XVII

ASSIGNMENT OR TRANSFER OF INTEREST

- 17.1 The ARCHITECT shall not assign or transfer ARCHITECT'S interest in this AGREEMENT without the written consent of the CITY.

ARTICLE XVIII

SEVERABILITY

- 18.1 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 XIX

INTEREST IN CITY CONTRACTS PROHIBITED

- 19.1 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.
- 19.2 The ARCHITECT 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 sub ARCHITECT on a CITY contract, a partner or a parent or subsidiary business entity.

- 19.3 The ARCHITECT 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 ARCHITECT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY'S Ethics Code.

ARTICLE XX

CONFLICTS OF INTEREST DISCLOSURE

- 20.1 ARCHITECT 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 XXI

RIGHT OF REVIEW AND AUDIT

- 21.1 The ARCHITECT grants the CITY, or its designees, the right to audit, examine or inspect, at the CITY'S election, all of the ARCHITECT'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 ARCHITECT 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. "ARCHITECT'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 ARCHITECT 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 ARCHITECT agrees to allow the CITY'S designee access to all of the ARCHITECT'S Records, ARCHITECT'S facilities, and current or former employees of ARCHITECT, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. ARCHITECT also agrees to provide adequate and appropriate Work space necessary to CITY or its designees to conduct such audits, inspections or examinations.
- 21.3 ARCHITECT must include this audit clause in any sub ARCHITECT, supplier or vendor contract.

ARTICLE XXII
ENTIRE AGREEMENT

22.1 This AGREEMENT represents the entire and integrated AGREEMENT between the CITY and the ARCHITECT 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 ARCHITECT.

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 XXIV
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:

If intended for the ARCHITECT, to:

Capital Improvements Management
Services Department

Attention: Assistant Director, Debbie
Sittre
114 West Commerce, 5th Floor
San Antonio, Texas 78205

With a copy to:

Capital Improvements Management
Services Department
Attention: City Architect's Office
114 West Commerce, 4th Floor. Rm 412
San Antonio, Texas 78205

ARTICLE XXV
INDEPENDENT CONTRACTOR

25.1 In performing services under this AGREEMENT, the relationship between the CITY and the ARCHITECT is that of independent contractor. By the execution of this AGREEMENT, the ARCHITECT and the CITY do not change the independent contractor status of the ARCHITECT. The ARCHITECT 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 workflow and determining how the Services are to be performed. No term or provision of this AGREEMENT or act of the ARCHITECT in the performance of this AGREEMENT shall be construed as making the ARCHITECT the agent, servant or employee of the CITY, or as making the ARCHITECT 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

CAPTIONS

26.1 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 presents, to be executed by the hand of the CITY Manager, or designee, acting by the hand of NAME thereunto authorized TITLE; does now sign, execute and deliver this document.

Executed on this ____ day of _____, Year _____.

CITY OF SAN ANTONIO

(NAME OF) ARCHITECT

Peter Zanoni
ASSISTANT CITY MANAGER

SIGNATURE

PRINTED NAME

TITLE

APPROVED:

CITY ATTORNEY

EXHIBIT A

SERVICE FEES AND REIMBURSABLES

LABOR CATEGORY AND RATE SCHEDULE

REIMBURSABLES

EXHIBIT B
SCHEDULE OF PROJECT SERVICES

EXHIBIT C
ADDITIONAL SERVICES

EXHIBIT D
SBEDA PLAN