PROFESSIONAL SERVICES AGREEMENT
FOR ENGINEERING SERVICES

DOWNTOWN TRANSPORTATION STUDY

Project # 40-00261

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Agreement is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas, (hereafter referred to as "City" or “Owner”) and

NAME OF ENGINEERING FIRM

(hereafter referred to as "Consultant"), said Agreement being executed by City pursuant to the City Charter, Ordinances and Resolutions of the City Council, and by Consultant for ENGINEERING SERVICES set forth herein in connection with the above designated Project for the City of San Antonio.

INDEX

ARTICLE NO.	TITLE	PAGE
I.	DEFINITIONS	2
II.	COMPENSATION	3
III.	METHOD OF PAYMENT	3
IV.	SCOPE OF SERVICES	5
V.	TIME AND PERIOD OF SERVICE	6
VI.	PROJECT SERVICES REQUEST PROCESS (RESERVED)	7
VII.	COORDINATION WITH CITY	7
VIII.	REVISIONS TO DOCUMENTS	7
IX.	OWNERSHIP OF DOCUMENTS	8
X.	TERMINATION AND/OR SUSPENSIONS OF SERVICES	9
XI.	CONSULTANT’S WARRANTY	11
XII.	SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY	11
XIII.	ASSIGNMENT OR TRANSFER OF INTEREST	18
XIV.	INSURANCE REQUIREMENTS	18
XV.	INDEMNIFICATION	21
XVI.	CLAIMS AND DISPUTES	21
XVII.	SEVERABILITY	23
XVIII.	INTERESTS IN CITYCONTRACTS PROHIBITED	23
XIX.	CONFLICTS OF INTEREST DISCLOSURE	24
XX.	STANDARDS OF CARE AND LICENSING	243
XXI.	RIGHT OF REVIEW AND AUDIT	24
XXII.	ENTIRE AGREEMENT	25
XXIII.	VENUE	25
XXIV.	NOTICES	25
XXV.	INDEPENDENT CONTRACTOR	25
XXVI.	CAPTIONS	25

EXHIBIT 1 – PROJECT DESIGN PHASES TIMELINE
EXHIBIT 2 – COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES
EXHIBIT 3 – SBEDA PLAN (If Required)

ARTICLE I.
DEFINITIONS

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

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

1.2 "City" mean the City of San Antonio, Texas.

1.3 "City Designated Representative (ODR)” means person designated by City to act for City.

1.4 “Compensation” means amounts paid for services under this Agreement.

1.5 "Consultant" means **NAME OF ENGINEERING FIRM** and its officers, partners, employees, agents and representatives, and all sub-Consultants, if any, as well as all other persons or entities for which Consultant legally is responsible.

1.6 "Director" means the Director of City’s Capital Improvements Management Services Department (hereafter referred to as “CIMS”) or his/her designee.

1.7 "Plans and Specifications" means the construction documents.

1.8 “Portal” means the City’s internet-based, project management software for approving Task Orders and Applications for Compensation.

1.9 "Project" means the specific Engineering Services work for which services are negotiated and executed by both Parties.

1.10 "Proposal" means Consultant's Proposal to provide services for this Project.

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

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

1.13 "Scope of Services" mean the services described in Article IV Scope of Services herein.

1.14 “Services” means those services described in the Scope of Services.

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

ARTICLE II.
COMPENSATION

2.1 The Compensation for all services included in this Agreement and in the Scope of Services for this Agreement shall not exceed **AMOUNT IN WORDS, ($XXXX).** Amount to be paid to Consultant, including authorized adjustments, is the total amount payable by City to Consultant for performance of the Services under this Agreement. It is agreed and understood that such amount will constitute full compensation to Consultant for Services included in the Scope of Services and shall meet all requirements of the City's Design Guidelines. Unless and until City makes further appropriations for any services not included in the Scope of Services of this Agreement, the obligation of City to Consultant for Compensation in connection with this Agreement cannot and will not exceed such sum of **AMOUNT IN WORDS, ($XXXX)** without further amendment to this Agreement.

2.2 Reimbursable Expenses

When authorized by the City in writing, the *Consultant/Contractor (as applicable)* will be entitled to reimbursement at cost for services and related expenses incurred for the following items:

2.2.1 Travel outside of the greater San Antonio metropolitan area only if approved in writing by the City prior to such travel. Reimbursement for travel costs will be limited to costs directly associated with *Consultant's/Contractor's* performance of *Service/Work* under the Agreement. Travel costs (prior to markup) are limited to the per diem rates set annually by the Federal Government's General Services Administration. The *Consultant/Contractor* shall proved detailed receipts for all reimbursable charges. Travel expenses shall not exceed *the amount noted in attached Scope / Budget* without further approval of City.

2.2.2 Mailing, courier services and copies of documents requested by the City in writing in excess of the copies to be provided under the Agreement. These costs shall not exceed the *amount noted in attached Scope / Budget* without further approval of City.

2.2.3 Graphics, physical models, and presentation boards requested by the City in writing in excess of the copies to be provided under the Agreement. These costs shall not exceed *the amount noted in attached Scope / Budget* without further approval of City.

Note that the City does not allow a markup on any of the above reimbursable items and only will reimburse approved hard costs incurred.

2.2.4 Markup on Sub-Consultant work

Markups for Sub-Consultant work shall not exceed five percent 5%. There shall be no markup on reimbursables from Sub-Consultants.

ARTICLE III.
METHOD OF PAYMENT

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

3.1.1 Payment may be made based solely on the units of services completed and approved by the Director and the associated unit price for such service, as may be described in Consultant's proposal/fee schedule (attached hereto and incorporated by reference herein as **Exhibit "1"**).

3.1.2 Monthly payments for services performed in the various additional services will be reviewed by Director upon Consultant entering itemized invoices, with all required back-up, within the Portal. The invoice shall indicate the value of the additional services performed to date.

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

3.3 Consultant warrants that title to all Services covered by an Application for Payment will pass to City no later than the time of payment. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT 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 PAYMENTS MADE BY CITY TO CONSULTANT.**

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

3.5 Project Close Out and Final Payment:

3.5.1 Final billing shall indicate "Final Bill - no additional compensation is due to Consultant".

3.5.2 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

3.5.2.1 delays in the performance of Consultant's work;

3.5.2.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to City is provided by Consultant;

3.5.2.3 failure of Consultant to make payments properly to sub-consultants or vendors for labor, materials or equipment;

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

3..5.2.5 damage to City; or

3..5.2.6 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

3.5.3 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld will be made within a reasonable time. City shall not be deemed in default by reason of withholding compensation as provided for in this Article III.

3.5.3.1 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 City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.

3.5.3.2 City shall make final compensation of all sums due Consultant not more than thirty (30) days after Consultant’s execution and delivery of a final Pay Application.

3.5.3.3 Acceptance of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.

3.5.3.4 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant 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 Consultant and all such books, payrolls and records, and shall have the right to audit same.

3.6 Internet-based Project Management Systems. City will administer its services through an Internet-Based Management System (“Portal”). In such case, Consultant shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and other administrative activities. City shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all necessary Project Team Members.

3.6.1 All invoices shall be submitted through City’s Program Management Portal

ARTICLE IV.
SCOPE OF SERVICES

[SUBJECT TO REVISION AS APPLICABLE]

4.1 The scope of work for this Project is to identify potential transportation solutions, to enhance accessibility for residents and visitors, improve marketability for businesses downtown hrough a balanced system of transportation modes which support economic development, improve vehicular mobility, expand transportation options, promote healthy living and improve air quality. In addition, the scope includes the evaluation of the existing downtown transportation infrastructure and potential land uses and the identification of areas of potential improvement.

Elements to Consider:

- One-way & two-way streets
- Street Lighting
- Street & Sidewalk Paving
- On-Street Parking
- Historic Issues
- Mass transit: bus and rail travel
- Bike routing
- Pedestrian access
- ADA Accessibility
- Infrastructure (water, sewer, electric)
- Downtown and Surrounding Neighborhood Connectivity
- Traffic Calming
- Transit Stop Locations
- Traffic Signalizations
- HUD-DOT-EPA Partnership for Sustainable Communities Livability Principles

Current/Recent Studies to consider

- City of San Antonio Master Plan
- City of San Antonio Housing Master Plan
- SA 2020 Vision
- Public Spaces
- Downtown Strategic Plan
- Downtown Housing Study
- Downtown Neighborhood Plan
- Downtown Parking Study
- HemisFair Master Plan
- River North Master Plan
- Historic Civic Center Plan

ARTICLE V.
TIME AND PERIOD OF SERVICE

5.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and its execution by both parties.

5.2 Time is of the essence of this Agreement. Consultant shall perform and complete its obligations for the services under Article IV herein in a prompt and continuous manner, so as to not delay the development of services and so as to not delay the construction of the work for the Project, in accordance with the schedules approved by City.

5.3 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond Consultant's reasonable control. Within twenty one (21) days from the

occurrence of any event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines that Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement.

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

ARTICLE VI.
RESERVED

ARTICLE VII.
COORDINATION WITH THE CITY

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

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

7.3 City promptly will give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, or any development that affects the scope or timing of Consultant's services.

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

ARTICLE VIII.
REVISIONS TO DOCUMENTS

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

ARTICLE IX.
OWNERSHIP OF DOCUMENTS

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

9.2 Consultant acknowledges and agrees that City exclusively shall own 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 said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City, upon request, termination or completion of this Agreement without restriction on future use.

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

9.4 Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that, in part or in whole, was produced from this Agreement is the property of 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 Consultant. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of City (excluding any instrument of services, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same are based on any claim that materials or work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

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

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

9.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Consultant, to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks,

patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

ARTICLE X.
TERMINATION AND/OR SUSPENSION OF SERVICES

10.1 Right of Either Party to Terminate for Default

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

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

10.2 Right of City to Terminate

10.2.1 City reserves the right to terminate this Agreement, for reasons other than substantial failure by Consultant to perform, by issuing a signed Notice of Termination, citing this **Paragraph 10.2.1**, which shall take effect on the twentieth (20th) calendar day following receipt of said notice and upon the scheduled completion date of the performance phase in which Consultant then currently is working, whichever effective termination date occurs first.

10.3 Right of City to Suspend Giving Rise to Right of Consultant to Terminate

10.3.1 City reserves the right to suspend this Agreement at the end of any phase for the convenience of City by issuing a written and signed Notice of Suspension, citing this **Paragraph 10.3.1**, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall, in no way, guarantee what the total number of days of suspension will occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by the Consultant.

10.3.2 Consultant hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) calendar days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this **Paragraph 10.3.2**, to City after the expiration of one hundred twenty (120) calendar days from the effective date of the suspension. Termination, pursuant to this **Paragraph 10.3.2**, shall become effective immediately upon receipt of said written notice by City.

10.4 Procedures Consultant to follow upon Receipt of Notice of Termination

10.4.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set out hereinabove, Consultant immediately shall begin the phase-out and the discontinuance of all services, in connection with the performance of this Agreement, and shall proceed promptly to cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30)

calendar days after receipt of such Notice of Termination, unless Consultant successfully has cured a failure to perform, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant an extension to the time period for submittal of such statement.

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

10.4.3 Upon the above conditions being met, absent any reason why the City may be compelled to withhold fees, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of the fee.

10.4.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon City. Consultant further acknowledges that the failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement by Consultant.

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

10.5 Procedures Consultant to Follow upon Receipt of Notice of Suspension

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

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

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

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

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

10.5.6 Upon the above conditions being met, absent any reason why the City may be compelled to withhold fees, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of the fee.

10.5.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon the City. Consultant further acknowledges that the failure of Consultant substantially to comply with the submittal of the statements and documents, as required herein, shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

ARTICLE XI.
CONSULTANT'S WARRANTY

Consultant warrants that the services required under this Agreement will be performed with the same degree of professional skill and care that typically are exercised by similar consulting professionals performing similar services in Bexar County, Texas. Consultant further warrants that it has not employed or retained any company or person other than a bona fide employee, working solely for Consultant, to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person a 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, City shall have the right to terminate this Agreement under the provisions of **Article X** herein.

ARTICLE XII.
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Too be determined by IEDD per project.

12.1. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, hereafter referred to as “SBEDA” or “the SBEDA Program”), which is posted on City’s International and Economic Development (hereafter referred to as “IEDD”) website page and is also available in hard copy form upon request to 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 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.

12.2. Definitions

12.2.1 Affirmative Procurement Initiatives (hereafter referred to as “API”) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (hereafter collectively referred to as “S/M/WBE”) program tools and solicitation incentives which 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.

12.2.2 Certification or "Certified" – The process by which the Small Business Office (hereafter referred to as "SBO") staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as "ESBEs") automatically are eligible for Certification as SBEs. Any firm may apply for multiple Certifications which 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, City accepts any firm which is certified by local government entities and other organizations identified herein which 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**.

12.2.3 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 also must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, 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 Consultant to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by City as fraudulent if Consultant attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Consultant 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 Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

12.2.4 Good Faith Efforts – The documentation of Consultant'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 Consultant'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 Consultant'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 Consultant; 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.

12.2.5 HUBZone Firm − A business which 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).]

12.2.6 Independently Owned and Operated – The 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 The M/WBE firm also must be independently owned and operated, in the sense that it cannot be the subsidiary of another firm which does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

12.2.7 Individual − Is an adult person that is of legal majority age.

12.2.8 Industry Categories – Procurement groupings for the City of San Antonio, inclusive of construction, architectural & engineering (collectively referred to as "A&E"), professional services, other services and goods & supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term sometimes may be referred to as "business categories."

12.2.9 Originating Department – The City department, or authorized representative of City, which issues solicitations or for which a solicitation is issued.

12.2.10 Payment – The dollars actually paid to Consultants and/or Sub-consultants for City contracted goods and/or services.

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

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

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

12.2.14 SBE Directory - A listing of small businesses which have been certified for participation in City's SBE Program APIs.

12.2.15 SBE Subcontracting Program – An API under which Consultants 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 which 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 Consultant also may be required to reflect Good Faith Efforts that a Consultant has taken, or commits to taking in the case of solicitations which 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.

12.2.16 Significant Business Presence – To qualify for this Significant Business Presence program, an 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 (SAMSA), from which 20% of its full-time, part-time and contract employees regularly are 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.

12.2.17 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 which are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (hereafter referred to as "SBA") size standard for a small business in its particular industry/ies and meets the Significant Business Presence requirements as defined herein.

12.2.18 Small Business Office (SBO) – The office within the International and Economic Development Department (hereafter referred to as "IEDD") of City which primarily is responsible for general oversight and administration of the S/M/WBE Program.

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

12.2.20 Sub-Consultant – Any entity which is providing goods or services to Consultant in furtherance of Consultant's performance under a contract or purchase order with City. A copy of each binding agreement between Consultant and its Sub-Consultants shall be submitted to City prior to execution of this contract agreement and any contract modification agreement.

12.2.21 Suspension – The temporary stoppage of the SBE or M/WBE firm's beneficial participation in 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, which 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 Consultant's and/or S/M/WBE firm's performance and payment under City contracts due to City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

12.2.22 Sub-Consultant Utilization Plan – A binding part of this Agreement which states Consultant's commitment for the use of Joint Venture Partners and / or Sub-Consultants in the performance of this Agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant's Joint Venture partners and/or Sub-Consultants in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and Sub-Consultant, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Sub-Consultant's names, scopes of work or dollar values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

12.3 SBEDA Program Compliance – General Provisions. As Consultant acknowledges that the terms of City's SBEDA Ordinance, as amended, together with all

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

12.3.1 Consultant fully shall cooperate with the Small Business Office and other City departments in its data collection and monitoring efforts regarding Consultant's utilization and payment of Sub-Consultants, 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 Sub-Consultants with this term;

12.3.2 Consultant fully shall cooperate with any City or SBO investigation (and also shall respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant or its Sub-Consultant or suppliers;

12.3.3 Consultant 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 Sub-Consultants and workers to determine whether there has been a violation of the terms of this Agreement;

12.3.4 Consultant immediately shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Sub-Consultants/Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Sub-Consultant/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Sub-Consultant or supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants, or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

12.3.5 Consultant immediately shall notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.

12.3.6 Consultant shall retain all records of its Sub-Consultant payments for this contract for a minimum of four (4) years, or as required by state law, following the conclusion of this Agreement or, in the event of litigation concerning this Agreement, for a minimum of four (4) years, or as required by state law, following the final determination of litigation, whichever is later.

12.3.7 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 Consultant's Sub-Consultant/Supplier Utilization Plan,

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

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

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this Agreement is being awarded pursuant to the SBE Subcontracting Program. Consultant agrees to subcontract at least **20%** of its prime contract value to certified SBE firms headquartered or have a significant business presence within the SAMSA. The Sub-Consultant/Supplier Utilization Plan that Consultant submitted to City, with its response for this Agreement (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this Agreement), and that contains the names of the certified SBE Sub-Consultants to be used by Consultant on this Agreement, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Sub-Consultant, and documentation including a description of each SBE Sub-Consultant's scope of work and confirmation of each SBE Sub-Consultant'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 Consultant to attain this sub-consulting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its Agreement shall be a material breach and grounds for termination of the Agreement with City and may result in debarment from performing future City Agreements 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.

12.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, Consultant represents and warrants that it has complied with City's Commercial Nondiscrimination Policy throughout the course of this solicitation and Agreement award process, and will continue to comply with said Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Sub-Consultant, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

12.6 Prompt Payment. Upon execution of this Agreement by Consultant, Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Sub-Consultants, including HUBZone Sub-Consultants, to ensure that the Consultant's reported sub-consultant participation is accurate. Consultant shall pay its Sub-Consultants in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment

Act") within ten (10) calendar days of receipt of payment from City. In the event of Consultant's noncompliance with these prompt payment provisions, no new City contracts shall be issued to Consultant until City's audit of previous Sub-Consultant payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

12.7 Violations, Sanctions and Penalties. In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

12.7.1 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 benefiting from the SBEDA Ordinance;

12.7.2 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;

12.7.3 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;

12.7.4 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

12.7.5 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.

12.8 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:

12.8.1 the suspension of this Agreement;

12.8.2 the Withholding of funds;

12.8.3 the rescission of this Agreement, based upon a material breach of contract pertaining to S/M/WBE Program compliance;

12.8.4 the refusal to accept a response or proposal; and

12.8.5 the disqualification of Consultant or other business firm from eligibility for providing goods or services to City for a period not to exceed two (2) years (upon City Council approval).

ARTICLE XIII.
ASSIGNMENT OR TRANSFER OF INTEREST

Consultant shall not assign or transfer Consultant's interest in this Agreement without the written consent of City.

ARTICLE XIV.
INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to City's CIMS/Contract Services, which clearly shall be labeled '**DOWNTOWN TRANSPORTATION STUDY-PROJECT NO. 40-00261"** 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. City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form(s) must have the agent's signature, phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's CIMS Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

14.3 Consultant's financial integrity is of interest to City. Therefore, subject to the Consultant's right to maintain reasonable deductibles in such amounts as are approved by City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of not less than A- (VII), in the following types and for an amount not less than the amount listed:

1. Workers' Compensation	Statutory Limit
2. Employers' Liability	$500,000/$500,000/$500,000
3. Commercial General Broad Form Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; General Aggregate limit of $2,000,000 or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Professional Liability (Claims made form)	$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

14.4 As they apply to the limits required by the City, City shall be entitled, upon request and without

expense, to receive copies of the policies, declarations page and all endorsements thereto. Consultant shall be required to comply with any such requests and shall submit a copy of the replacement insurance documents to City at the address provided below within ten (10) calendar days of City's request. Consultant shall pay any costs incurred resulting from said request. If the City requests a copy/copies of any insurance policy, Consultant prominently will mark those portions of the policy it regards as confidential. In the event a third party makes an open records request under the Texas Freedom of Information Act, or other public information law, asking to view or copy Consultant's policy, City shall submit the material to the Texas Attorney General (AG) for an opinion regarding the release of said policy. Consultant and City agree that City will be bound by the AG opinion. Similarly, City will provide all material under a court order or a litigation discovery rule which may require or direct disclosure of the information.

City of San Antonio
Capital Improvements Management Services Department
Attn: Contracts Division 9th Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

- Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of City; and

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

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

14.7 In addition to any other remedies it may have, upon Consultant's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Consultant to stop services/tasks hereunder and/or withhold any compensation which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

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

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

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

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

ARTICLE XV.
INDEMNIFICATION

15.1 **Consultant, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including 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 CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

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

ARTICLE XVI.
CLAIMS AND DISPUTES

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

16.2 **Time Limit on Claims.** Claims by Consultant or by City must be initiated in writing to the other party within twenty-one (21) calendar days after the occurrence of the event giving rise to such Claim.

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

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

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

16.5.1 No consequential damages will be allowed.

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

16.5.3 No profit will be allowed on any damage claim.

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

16.7 Alternative Dispute Resolution.

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

16.7.2 **Requirement for Senior Level Negotiations.** Before invoking mediation or any other alternative dispute process set forth herein, the parties agree that they first shall 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 (30) calendar days, after a party delivers a written notice of such dispute, then the parties shall proceed with the mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.7.3 <u>Mediation</u>.

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

16.7.3.2 Request for mediation shall be in writing, and shall request that the

mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.

16.7.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 calendar days following the date of the request for mediation, all conditions precedent in this Article XVI shall be deemed to have occurred.

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

ARTICLE XVII.
SEVERABILITY

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

ARTICLE XVIII.
INTEREST IN CITY CONTRACTS PROHIBITED

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

18.2 Consultant acknowledges that it is informed that the Charter of 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 City or any City agency, such as the City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a. a City officer or employee; b. a City officer or employee's parent, child or spouse; c. a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10)%) or more of the fair market value of the business entity; d. a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that Consultant, its officers, employees and agents are neither officers nor employees of

City. Consultant further warrants and certifies that is has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

ARTICLE XIX.
CONFLICTS OF INTEREST DISCLOSURE

Consultant must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so will constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes: a) being in a partnership or joint venture with a City officer or employee; b) having a contract with a City officer or employee; c) being joint owners of a business with a City officer or employee; d) owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or e) having an established business relationship with a City Officer or employee as a client or customer.

ARTICLE XX.
STANDARD OF CARE/LICENSING

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

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

ARTICLE XXI.
RIGHT OF REVIEW AND AUDIT

21.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under the Agreement, during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in 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 City agrees that it will exercise the right to audit, examine or inspect Consultant’s records only during City’s regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

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

ARTICLE XXII.
ENTIRE AGREEMENT

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

ARTICLE XXIII.
VENUE

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

ARTICLE XXIV.
NOTICES

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement shall personally be 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 otherwise is notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) calendar days of mailing.

If intended for City to:	If intended for Consultant, to:
Capital Improvements Management Services Attention: Contract Services 114 West Commerce, 9th Floor San Antonio, Texas 78205	

ARTICLE XXV.
INDEPENDENT CONTRACTOR

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

ARTICLE XXVI
CAPTIONS

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

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

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

CITY OF SAN ANTONIO	**ENGINEERING FIRM/CONSULTANT**
_____	_____
PETER ZANONI	NAME
ASSISTANT CITY MANAGER	TITLE

APPROVED:

_____
CITY ATTORNEY

EXHIBIT 1 – PROJECT DESIGN PHASES TIMELINE

EXHIBIT 2 – COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

EXHIBIT 3 – SBEDA PLAN (IF REQUIRED)