PROFESSIONAL SERVICES AGREEMENT
FOR ON-CALL PROFESSIONAL ENVIRONMENTAL (NEPA) SERVICES 2012

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" and

_____Firm's Name_____

_____Firm's Address_____

_____City, State & Zip Code_____

hereafter referred to as "Consultant", said Agreement being executed by City pursuant to the City Charter, Ordinance No. 2012-xx-xx-xxxx, passed and approved by the San Antonio City Council on month, day, 2012, and by Consultant for On-Call Professional Environmental (NEPA) Services 2012 hereinafter set forth in connection with the Request for Qualifications (RFQ) CIMS033012DV, issued on March 30, 2012 by the City of San Antonio.

INDEX

ARTICLE NO.	TITLE	PAGE
ARTICLE I.	DEFINITIONS	2
ARTICLE II.	COMPENSATION	3
ARTICLE III.	METHOD OF PAYMENT	3
ARTICLE IV.	SCOPE OF SERVICES	5
ARTICLE V.	TIME AND PERIOD OF SERVICE	8
ARTICLE VI.	PROJECT SERVICES REQUEST PROCESS	9
ARTICLE VII.	COORDINATION WITH THE CITY	10
ARTICLE VIII.	REVISIONS TO DOCUMENTS	10
ARTICLE IX.	OWNERSHIP OF DOCUMENTS	10
ARTICLE X.	TERMINATION AND/OR SUSPENSION OF SERVICES	11
ARTICLE XI.	CONSULTANT'S WARRANTY	13
ARTICLE XII.	Small Business Economic Development Advocacy (SBEDA)	13
ARTICLE XIII.	ASSIGNMENT OR TRANSFER OF INTEREST	13
ARTICLE XIV.	INSURANCE REQUIREMENTS	18
ARTICLE XV.	INDEMNIFICATION	20
ARTICLE XVI.	CLAIMS AND DISPUTES	21
ARTICLE XVII.	SEVERABILITY	22
ARTICLE XVIII.	INTEREST IN CITY CONTRACTS PROHIBITED	22
ARTICLE XIX.	CONFLICTS OF INTEREST DISCLOSURE	23
ARTICLE XX.	STANDARD OF CARE/LICENSING	23
ARTICLE XXI.	RIGHT OF REVIEW AND AUDIT	23
ARTICLE XXII.	ENTIRE AGREEMENT	24
ARTICLE XXIII.	VENUE……	24
ARTICLE XXIV.	NOTICES	24
ARTICLE XXV.	INDEPENDENT CONTRACTOR	24
ARTICLE XXVI	CAPTIONS	25
EXHIBIT 1	CONSULTANT'S FEE SCHEDULE	26

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 "Owner 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 _____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 or his designee.

1.7 "Plans and Specifications" means the construction documents.

1.8 “City’s Internet-based Project Management System” means the system used by the City for approving Task Orders and Applications for Compensation.

1.9 "Project" means the specific **On-Call Professional Environmental (NEPA) Services 2012** work for which a Task Order is negotiated and executed by both Parties.

1.10 "Proposal" means Consultant's Proposal to provide services for this Project submitted in response to RFQ CIMS033012DV.

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

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

1.13 “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.

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

1.15 “Services” means those services described in the Scope of Services as set out in a Task Order.

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

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

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

ARTICLE II.
COMPENSATION

2.1 The Compensation for all services included in this Agreement SHALL NOT EXCEED **(AMOUNT IN WORDS ($XXX.XX) for the initial contract period, as authorized in the enabling Ordinance.** Extension of this agreement for each of the **three additional one year** "Extension Period" will increase the amount of this Agreement by **$XXX.XX** per each extension period for a total potential amount not to **exceed (AMOUNT IN WORDS ($XXX.XX).**

2.2 Consultant shall submit a Proposed Service Plan for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposed Service Plan. The City's approval shall be evidenced by the Finalized Task Order executed by both parties in the City's Internet-based Project Management System. Task Orders shall be numbered sequentially starting with number one and must reference this Contract. Each Finalized Task Order, as entered into the City's Internet-based Project Management System, will become a part of this Agreement.

2.2.1 Consultant understands and agrees that City has entered into multiple professional services agreements with other Consultants and has the authority to assign work tasks at its sole discretion.

2.2.2 Consultant understands and agrees that City makes no minimum guarantees with regard to the amount of services, if any, Consultant may be extended under this AGREEMENT.

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

2.4 Reimbursable Expenses

When authorized by the City in writing, Consultant will be entitled to reimbursement at actual incurred cost for services and related expenses for the following items:

2.4.1 Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs will be limited to costs directly associated with Consultant's performance of Service under the Agreement. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all reimbursable charges. Travel expenses, if any, shall be negotiated with each Task Order issued. Kindly note that City does not pay for Consultant's travel within SAMSA.

2.4.2 Mailing, courier services and copies of documents requested by the City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs, if any, shall not exceed the amount noted in Article IV herein without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Task Order.

2.4.3 Graphics, physical models, and presentation boards requested by the City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs shall not exceed the amount noted in Article IV herein without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Task Order. Note that the City does not allow a markup on any of the above reimbursable items and only will reimburse approved hard costs incurred.

2.4.4 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 consistent with the Task Order and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his or her sole

discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by 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 (Exhibit "1" hereto) and the approved Task Order.

3.1.2 Monthly payments for services performed in the various additional services will be reviewed by Director upon Consultant entering itemized invoices, with required back-up and reference to the individual Task Order within the City's Internet-based Project Management System. The invoice shall, indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.

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 Task Order's completion. 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" hereto.

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.

3.5.2.7 regulatory agency approvals for environmental information/documents provided by consultant.

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.

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 to 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 three (3) 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 City will administer its services through an Internet-based Project Management System. 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 Internet-based Project Management System.

ARTICLE IV.
SCOPE OF SERVICES

[SUBJECT TO REVISION AS APPLICABLE]

4.1 This Agreement is an on-call, Task Order, or indefinite delivery agreement for On-Call Professional Environmental (NEPA) Services 2012 and such other services that are required for Consultant to provide

or are associated with RFQ CIMS033012DV. Specific requirements as to location, conditions, procedures, and associated services pertaining to a Project shall be negotiated and set out in individual Task Orders for each request, which Task Orders are incorporated into and shall become a part of this Agreement. Consultant understands and agrees that City has entered into multiple On-Call Environmental (NEPA) Services 2012 agreements with other Consultants and has the authority to assign Task Orders at its sole discretion. As stated in Section 2.2.2 herein, Consultant understands and agrees that City makes no minimum guarantees with regard to the amount of Services, if any, Consultant may be extended under this Agreement.

4.1.1 Consultant shall provide On-Call Environmental (NEPA) Services 2012 and all associated services required for Consultant to provide such Services, pursuant to this Agreement, as further defined in individual Task Orders. The CITY performs an environmental constraint analysis for all capital improvement projects conducted by CIMS. CITY projects, such as Capital Improvement Projects (CIP), park improvement projects, and other City departmental projects, require compliance with several NEPA related environmental issues. NEPA related environmental issues or environmental constraint items evaluated as part of the environmental studies for City projects are as listed below:

Waters of the U.S.

- Compliance with United States Army Corp of Engineers Section 404 Permits and Clean Water Act
- Waters of the U. S., including wetlands delineations
- Permit Preparation
- Nationwide Permits
- Individual Permits
- Letters of Permission
- Mitigation Plans
- Wetland and stream mitigation design and monitoring
- Annual mitigation monitoring and reporting

Cultural Resources

- Compliance with the Texas Antiquities Code and Section 106 of the National Historic Preservation Act
- TARL Search/Background Reviews/Constraints Analysis
- Archeological Survey
- Limited Testing
- Testing to determine a site's potential to the NRHP or as SALs
- Shovel Testing
- Backhoe Trenching
- Geo-archeological Investigation
- Photo Documentation
- Native American Grave Protection and Repatriation Act Compliance
- Historical Standing Structure Surveys
- Cultural Resources Mitigation
- Archeological monitoring during construction, as required during construction
- Contexts Development
- Historical and Archival Backgrounds
- Artifact Curation
- Health and Safety Code Compliance as it pertains to cemeteries

Endangered Species

- Compliance with Endangered Species Act of 1973
- Endangered Species Habitat Evaluations
- Endangered Species Surveys
- Migratory Bird Treaty Act
- Karst Surveys

- Biota Surveys
- Section 10 Permitting
- USFWS Consultations

Socioeconomic

- Demographics
- Neighborhood Cohesion
- Economy
- Community Impacts
- Environmental Justice
- Right of Way Acquisition, Displacement, & Relocations

Public Involvement

- Public Hearing and Meeting Planning/Coordination
- Participation/Presentation at public meetings / public hearings
- Preparation of Letters/Mailings/Public Advertisements
- Preparation of Public Hearing and Meeting Reports
- Preparation of site figures/exhibits/powerpoint presentations
- Provide a court reporter, as necessary

Noise/Air

- Noise Modeling using Traffic Noise Model 2.5 programs and field equipment or latest modeling software approved by TxDOT and FHWA
- Air modeling using Mobile 6 or latest modeling software approved by TxDOT and FHWA
- National Ambient Air Quality Standards
- Carbon Monoxide Traffic Air Quality Analysis
- Congestion Management Process / System Analysis
- TxDOT's Guidelines for Analysis and Abatement of Roadway Traffic Noise (2011)

Compliance with Section 401 Water Quality, Clean Water Act, and Edwards Aquifer Authority Regulations

- Permanent Best Management Plans
- Section 303(d)
- Stormwater
- Edward's Aquifer TCEQ Rules; Edwards Aquifer Authority Environmental Compliance Rules, if and when promulgated
- Floodplain
- Water Pollution Abatement Plans

Vegetation

- Species Identification
- Texas Parks Wildlife Department "Vegetation Types of Texas
- Impacts

Indirect and Cumulative Impacts

- Indirect Impacts
- Cumulative Impacts
- TxDOT's guidance on Preparing Indirect and Cumulative Impact Analyses

Section 4(f) Resources

- Compliance with 23CFR 774 & Section 4f of the 1996 U.S. Department of Transportation Act
- Section 4f Evaluations
- Preparation of Section 4f de minimis reports
- Preparation of Section 4f reports
- Preparation / Assistance of Memorandum of Agreements for Mitigation Efforts
- Preparation / Design of Mitigation Efforts
- Consultation with FHWA / TxDOT / THC

Hazardous Materials

- Environmental database searches in accordance with ASTM requirements

4.1.2 Additionally, as part of the CITY and TxDOT's NEPA process, the CITY is required to assess all environmental impacts related to the transportation improvement projects, determine potential environmental impacts, and obtain environmental clearances from FHWA prior to construction advertisement. The selected firm(s) will provide NEPA related services including, but not limited to, the following:

4.1.3 Prepare and complete environmental documents in accordance with TxDOT's current environmental requirements (new state environmental rules and current SOUs), FHWA requirements, or other federal agencies, such as HUD, USACOE, FEMA, etc.

4.2 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend, and holiday service, as requested by Department. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or sub-Consultants of Consultant.

4.5 Consultant shall not commence service on any Task Order authorized under this Agreement until being thoroughly briefed on the scope of the project and being notified in writing to proceed. Should the scope subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.

4.6 Consultant, in consideration for the compensation herein provided, shall render the professional services described in this Section that are necessary for the advancement of the Project to substantial completion.

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

4.8 Consultant's Fee Schedule, which includes pre-priced tasks and/or hourly rates, is incorporated by reference herein and attached as Exhibit "1" hereto.

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 the execution by both parties and shall remain in force for the period of one (1) year, herein referred to as the "Initial Term".

5.2 As the enabling Ordinance provides, City shall retain an option to extend this Agreement for **three (3) additional one (1) year periods,** herein referred to as the "Extension Period". The Director shall have the authority to exercise such options at his/her discretion under the same terms and conditions without further City Council approval, subject to annual budget limitations. In the event such options are exercised and any material provision of the Agreement is modified, such extension and amendment must be approved by the City Council.

5.3 Time is of the essence of this Agreement. Consultant shall perform and complete its obligations for the various Tasks of services under Article IV herein in a prompt and continuous manner so as to not delay the development of the design services and so as to not delay the construction of the work for the Project in accordance with the schedules approved by City and Construction Contractor. If, upon review of task orders, corrections, modifications, alterations or additions are required of Consultant, these items shall be completed by Consultant before that Task Order is approved.

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

5.5 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.

5.6 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 discontinued as provided for elsewhere in this Agreement.

ARTICLE VI.
PROJECT SERVICES REQUEST PROCESS

6.1 Necessary On-Call Environmental (NEPA) Services 2012 requirements will be established with each Project-specific Task Order.

6.2 When Director has a Project for which he desires to procure On-Call Environmental (NEPA) Services 2012, Director shall notify Consultant by issuing a Task Order Request. Each Task Order Request will include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposal, Project schedule and any specific deadlines for performance of On-Call Environmental (NEPA) Services 2012, and a deadline for providing Director with a Proposal based on the above.

6.3 Consultant shall prepare and submit to Director, within the timeline stated in a Task Order Request, a Proposal for the desired services which will include at a minimum: Scope of Services, specific staffing, an estimate of Project cost based on rates and fees agreed upon in Exhibit 1, approved Fee Schedule. The Consultant shall submit the Proposal in editable electronic format to the City. By submitting a Proposal, Consultant agrees to perform the requested service within the time stated in the Task Order Request.

6.4 Consultant and Director shall negotiate the Proposal. Once Consultant and Director reach mutual agreement as to scope, staffing, scheduling and cost, the City shall issue a finalized Task Order in the City's Internet-based Project Management System to be executed by both parties evidencing the agreed to scope and costs.

6.5 The Director has the authority to execute a Task Order in the City's Internet-based Project Management System on behalf of the City so long as such finalized Task Order does not exceed the total contract value and funds are provided for in the Project budget as allocated by City Council.

6.6 Consultant shall not proceed with services until after a finalized Task Order has been executed, Consultant receives a Notice to Proceed, and all documents required by Director in advance of commencement of work, to include proof of insurance, have been provided. Any services provided or expenses incurred, prior to receiving a Notice to Proceed or after the expiration of this Agreement on a particular finalized Task Order, will be at Consultant's sole risk and expense and may not be reimbursable by City.

6.7 Actual amounts billed shall not exceed the total amount as set out in the finalized Task Order.

6.8 Each Task Order shall be entered into the City's Internet-based Project Management System and

incorporated herein for all purposes. Each Task Order shall be numbered sequentially starting with number one and must reference this Agreement.

6.9 Consultant shall not invoice for any work associated with the Project Task Order Request process, including development of Proposal and the associated Task Order negotiation.

ARTICLE VII.
COORDINATION WITH THE CITY

7.1 Consultant shall hold periodic conferences with the Director or his 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 preparation of environmental documents for 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 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 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 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 or 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 to 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 Paragraph 10.1.

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

10.2 Right of City to Terminate

10.2.1 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), which shall take effect on the twentieth (20th) day following receipt of said notice and upon the scheduled completion date of the performance phase in which Consultant then is currently working, whichever effective termination date occurs first.

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

10.3.1 City reserves the right to suspend this Agreement at the end of any phase for the convenience of 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, 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) days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination (citing this paragraph) to City after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by 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 to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of such Notice of Termination (unless Consultant 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, 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 on the part of City. To this end, Consultant understands that 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 shall proceed promptly 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) days after the effective suspension date, within thirty (30) 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, 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 on the part of the City. To this end, Consultant understands that 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, 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.
DISADVANTAGE BUSINESS ENTERPRISE (DBE) PROGRAM

12.1 The City of San Antonio Capital Improvements Management Services Department (CIMS) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the Texas Department of Transportation (DOT). The objective of the DBE program is to ensure that the CIMS Department complies with 49 CFR Part 26, and to remedy past and current discrimination against disadvantaged businesses. The program ensures a “level playing field” and fosters equal opportunity in all Texas Department of Transportation and Federal Highway Association assisted contracts that include highway and street

construction.

The policy of the CIMS Disadvantaged Business Enterprise program is:

12.1.1 To ensure non-discrimination in the award and administration of DOT assisted and locally funded contracts;

12.1.2 To create a level playing field on which DBEs can compete fairly for DOT assisted and locally funded contracts;

12.1.3 To ensure that the DBE program is narrowly tailored in accordance with the applicable law;

12.1.4 To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

12.1.5 To help remove barriers to the participation of DBEs in DOT assisted and locally funded contracts;

12.4.6 To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

12.2 DBE OBLIGATION

The CIMS Department and/or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the CIMS Department and its contractors shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of TXDOT-assisted contracts.

THE DBE GOAL FOR THIS PROJECT IS 4%

12.3 DEFINITIONS

Affiliation *has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.*

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or
(ii) A third party or parties controls or has the power to control both; or
(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.

Commercially Useful Function—*a DBE is considered to perform a commercially useful function when it:*
(1) Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,
(2) Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.
Contractor means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.
Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantage business enterprise or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantage or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(3)*Good faith efforts* mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Principal place of business means the business location where the individuals who manage the firm's dayto-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

12.4 CERTIFICATION

1. A contractor/bidder/proposer shall submit to the City a copy of the DBE Certification Affidavit, for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers in the performance of work.

2. The Certification Affidavit must be from a firm that has been certified by one of the five (5) certifying agencies of the Texas Unified Certification Program (TUCP). The five agencies are: Texas Department of Transportation (TxDot), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.

3**.** A firm must be certified on or before the bid/proposal due date in order for the firm's proposed work on the particular contract to be credited toward the DBE goal. It is not enough for a certification application to have been submitted by the deadline.

12.5 COUNTING JOINT VENTURES

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, (provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
b. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
c. A description of the work to be performed by all the Joint Venture Partners.
d. Proof of current certification status of the individual DBE venture partners.

12.6 GOOD FAITH EFFORTS

The bidder/proposer shall demonstrate, to the satisfaction of the DBE Liaison that genuine efforts have been made to achieve the DBE goal. The requirements for demonstrating "good faith efforts" are set forth as follows:

1. Written notices to DBEs contacted by the bidder/proposer for specific scopes of work identified by the bidder/proposer for subcontracting opportunities not less than five (5) business days prior to bid due date. Such notices shall include information on the plans, specifications and scope of work, including the deadline for submission of interest in teaming;

2. Attendance at a pre-bid conference, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.

3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals.

4. For those DBES responding affirmatively in writing to the notice required by Item 1 above,

> (a) reasons why agreements were not reached, including written explanation for rejection of bids;
> (b) if additional elements of work have been identified by the bidder/proposer as available for subcontracting, the bidder/proposer shall contact the CIMS Department DBE Liaison to ascertain the availability of DBE firms in those areas.

5. Efforts to assist DBE contractors with bonding, insurance, and financing, where appropriate.

6. Seeking the assistance of the CIMS DBE Liaison in contacting DBEs.

7. A bidder/proposer shall commit to the minimum percentage of DBE utilization as submitted with its bid/proposal on this contract. During the term of this contract, any unjustified failure to comply with the level of DBE participation identified in the bid/proposal shall be considered a material breach of contract.

8. If the bidder/proposer is a certified DBE and the DBE bidder/proposer intends to perform a portion of the work with its own work force, the DBE bidder/proposer must identify the work specifically by type and dollar value and must perform the work indicated with its own work forces in order to have that work counted toward the goal. (Even though the bidder/proposer is a certified DBE does not relieve the DBE bidder/proposer of the responsibility to make good faith efforts.)

9. In addition, all bidders/proposers will be required to submit the following information with the bid:

(a) The names and addresses of DBE firms that will participate in the contract;
(b) A description of the work that each DBE will perform
(c) The dollar amount of the participation of each DBE firm participating
(d) Written documentation of the bidder's/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
(e) Written confirmation from the DBE that it is participating in the contract as provided in the bidder's/proposer's commitment.

12.7 EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a bidder/proposer will be evaluated by the DBE Liaison to determine whether the efforts to obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions, which the DBE Liaison may consider as part of the bidder's/proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate "Good Faith Efforts" are as follows:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

4. (a) Negotiating in good faith with interested DBEs. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(b) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a prime contractor failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the prime contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.

7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

9. In determining whether a bidder/proposer has made good faith efforts, the DBE Liaison may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the DBE Liaison may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

12.7 RECONSIDERATION MECHANISM

The CIMS Department DBE Liaison will evaluate the "good faith efforts" of a firm. If after reviewing the good faith efforts submitted by Bidder/Proposer, the DBE Liaison determines that the Bidder/Proposer has failed to adequately document its good faith efforts, then the Bidder/Proposer shall have the opportunity to provide written documentation or argument, to the CIMS Director, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Proposer will have the opportunity to meet in person with the CIMS Director to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The CIMS Director will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the CIMS Director.

The CIMS Director may determine that the efforts of the Bidder/Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City.

However, if the CIMS Director determines that the Bidder/Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Texas Department of Transportation

12.8 COMPLIANCE

If a bidder/proposer is awarded a contract:

1. The bidder/proposer must not terminate for convenience a DBE subcontractor (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the City's prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the bidder/proposer must notify the City immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

2. The Bidder/Proposer will be required to make good faith efforts to find another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the City has established for this contract. The Bidder/Proposer will be required to obtain the DBE Liaison's prior approval of the substitute DBE, through the submittal of Change of Subcontractors/Suppliers and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the Bidder/Proposer fails or refuses to comply in the time specified, our office may issue a termination for default.

12.9 PROMPT PAYMENT

The Prime Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its subcontract **no later than 10 days** from the date that the prime contractor has been paid by the City for invoices submitted for performance of subcontractor's work. A delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of San Antonio. This clause applies to both DBE and non-DBE subcontractors

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 Capital Improvements Management Services (CIMS)/Contract Services, which clearly shall be labeled "**On-Call Environmental (NEPA) Services 2012"** 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 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 during the effective period of this contract and any extension or renewal hereof and to modify insurance coverages and their limits, when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this contract. In no instance will City allow modification whereupon City may incur increased risk.

14.3 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. If the City requests a copy (ies) of any insurance policy, the Consultant will prominently 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 the policy, the 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 the City will be bound by the AG opinion. Similarly, the 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 contract 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 sub-CONSULTANTS are responsible for all damages to their own equipment and/or property.

ARTICLE XV.
INDEMNIFICATION

15.1 Consultant, covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT' activities under this Agreement, including any acts or omissions 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 the rights or performance of the 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE 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 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 not a corporation, then an official of the company authorized to bind Consultant by his 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) 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 herein, 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 16 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 shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.7.3 Mediation.

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) days following the date of the request, except upon agreement of both parties.

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

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

ARTICLE XVIII.
INTEREST IN CITY CONTRACTS PROHIBITED

18.1 No officer or employee of 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 subcontracts 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 City officer or employee; a City officer or employee's parent, child or spouse; a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10)%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a sub-consultant 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 will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

20.2 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 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 sub-consultant, 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

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this

Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

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

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement 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 (5) days of mailing.

If intended for City to:	If intended for Consultant, to:
Capital Improvements Management Services	Firm's Name
Attention: Contract Services	Att:
114 West Commerce, 9th Floor	Address
San Antonio, Texas 78205	City, State, and Zip Code

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 Consultant 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

_____
PETER ZANONI
ASSISTANT CITY MANAGER

Firm's Name

_____
Name
Title

APPROVED AS TO FORM:
Michael D. Bernard
City Attorney

_____
By: Assistant City Attorney

EXHIBIT 1
CONSULTANT'S FEE SCHEDULE for On-Call Professional Environmental (NEPA) Services 2012, Request for Qualifications (RFQ) CIMS033012DV, issued on March 30, 2012