PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS
COUNTY OF BEXAR
OF SAN ANTONIO

ON-CALL PROFESSIONAL ENGINEERING SERVICES

FOR THE CITY OF SAN ANTONIO

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

FIRM NAME
ADDRESS

an Engineer duly licensed and practicing under the laws of the State of Texas (hereafter referred to as "Engineer") said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Engineer for Engineering Design Services, as set forth herein in connection with the above designated Project for City.

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INDEX

ARTICLE NO.	TITLE	PAGE
I.	DEFINITIONS	3
II.	ENGINEER'S 'S RESPONSIBILITIES	5
III.	CITY'S RESPONSIBILITIES	6
IV.	SCOPE OF SERVICES	6
V.	COMPENSATION	7
VI.	METHOD OF PAYMENT	8
VII.	PROJECT INSPECTION SERVICES REQUEST PROCESS	10
VIII.	COORDINATION WITH THE CITY	11
IX.	REVISIONS TO DRAWINGS AND SPECIFICATIONS	11
X.	TIME AND PERIOD OF SERVICE	12
XI.	INSURANCE REQUIREMENTS	12
XII.	OWNERSHIP OF DOCUMENTS	15
XIII.	TERMINATION AND/OR SUSPENSION OF WORK	16
XIV.	INDEMNIFICATION	19
XV.	CLAIMS AND DISPUTES	19
XVI.	SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM	21
XVII.	ASSIGNMENT OR TRANSFER OF INTEREST	28
XVIII.	SEVERABILITY	29
XIX.	INTEREST IN CITY CONTRACTS PROHIBITED	29
XX.	CONFLICTS OF INTEREST DISCLOSURE	29
XXI.	RIGHT TO REVIEW AND AUDIT	30
XXII.	ENTIRE AGREEMENT	30
XXIII.	VENUE	31
XXIV.	NOTICES	31
XXV.	INDEPENDENT CONTRACTOR	31
XXVI.	CAPTIONS	32
EXHIBIT A	FEE SCHEDULE	33
EXHIBIT B	SBEDA SUBCONTRACTOR/SUPPIER UTILIZATION PLAN	34

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ARTICLE I.
DEFINITIONS

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

1.1 "Agreement" means this written document signed by City and Engineer, including any other document itemized and expressly referenced in or attached to and expressly made part of this Agreement, to include Engineer's proposal, to the extent accepted by City and not in conflict with the Articles of this Agreement: Fee Schedule – **Exhibit A;** SBEDA Subcontractor/Supplier Utilization Plan **- Exhibit B**.

1.2 "Application for Payment" means the electronic filing by the Engineer requesting to be paid for completed Work and materials stored at site.

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

1.4 "Engineer's Schedule of Services" means a detailed listing of the services to be performed and the time sequence for the delivery to include an estimated dollar value which shall be attached for the payment of the services over the term of this Agreement.

1.5 "Certificate of Substantial Completion" means the document issued by Engineer with City's consent at the stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract, so that City may occupy or utilize the Work for its intended use.

1.6 "City" and "Owner" mean the City of San Antonio, Texas.

1.7 "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money, and extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between City and Engineer arising out of or relating to this Agreement.

1.8 "Compensation" means the amount paid by City to Engineer for completed services accepted by City under this Agreement.

1.9 "Construction Contractor" is the firm hired by City to construct the Project.

1.10 "Construction Documents" are the complete set of documents approved by City for the Work to complete the Project, including the Construction Drawings and Specifications as set out in paragraph 3.10.2 herein.

1.11 "Construction Drawings and Specifications" are the documents used to convey the intent of Engineer for the purposes of constructing the Project.

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1.12 "Director" means the Director of City's Capital Improvements Management Services Department, or his/her designated project manager identified in the Notice to Proceed.

1.13 "Estimated Cost of Work" means Engineer's estimate of probable construction costs.

1.14 "Final Compensation" means the final amounts paid by City to Engineer for completed services accepted by City under this Agreement.

1.15 "Final Payment" means the final amounts paid by City to Construction Contractor for completed Work under the Construction Documents.

1.16 "Invoice" means written request for compensation from Engineer to City for services completed under this Agreement.

1.17 "Project" means the capital improvement/construction development undertaking of City.

1.18 "Proposal" means the proposal of Services submitted by Engineer in response to City's Request for Qualifications.

1.19 "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

1.20 "Schedule of Values" a schedule, submitted by the Engineer before the first Application for Payment, allocating dollar amounts to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Engineer may require. This schedule, unless objected to by Engineer, shall be used as the basis for reviewing Engineer's Applications for Payment.

1.21 "Schematic Design Document" shall have the meaning as defined in Paragraph 3.9.5 of this Agreement.

1.22 "Services" means the services performed by Engineer, as required by Articles III and IV of this Agreement.

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

1.24 "Work" means the construction work performed by the Construction Contractor.

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ARTICLE II.
ENGINEER'S RESPONSIBILITIES

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

2.2 Engineer warrants that Services provided by Engineer under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Bexar County, Texas.

2.3 Unless otherwise required by City, Engineer shall apply for and assist City in obtaining building permits from all governmental authorities having jurisdiction over each Project and such approvals and consents from others as may be necessary for the completion of each Project. Engineer will provide City reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Engineer, pursuant to other provisions of this Agreement, and shall appear on behalf of City at up to three meetings with governmental entities, but Engineer shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like, unless compensated therefore under other provisions of this Agreement.

2.4 Engineer shall be represented by a registered professional Engineer licensed to practice in the State of Texas at meetings of any official nature concerning each Project, including, but not limited to, scope meetings, review meetings, pre-bid meetings, preconstruction meetings, and other meetings as required by that particular Project.

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

2.6 The Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Suite. 2-350, Austin, Texas 78701, (512) 305-9000 and/or Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 4407723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

2.7 Acceptance of final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, associates, agents or sub-consultants for the accuracy and competency of their designs, drawings, specifications or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by City

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for any defect in the designs, working drawings, specifications or other documents and Work prepared by said Engineer, its employees, sub-consultants and agents.

2.8 Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Engineer, 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 XIII** herein.

ARTICLE III.
CITY'S RESPONSIBILITIES

3.1 The Director or a representative appointed by 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 Engineer's services.

3.2 City shall give prompt written notice to Engineer whenever City observes or otherwise becomes aware of any defect in Engineer's Services, in the Work of Construction Contractor or any development which affects the scope or timing of Engineer's Services.

3.3 City reserves the right to contract directly for the services of the geotechnical engineers, surveyors, material testing and special testing of materials, as required by the code and Contract Documents. In some instances, however, City may request these listed services to be managed by Engineer as an Additional Services. In most instances, Environmental and hazardous waste testing will be contracted by City.

ARTICLE IV.
SCOPE OF SERVICES

4.1 Engineer understands and agrees that City has entered into multiple **On-Call Mechanical, Electrical and Plumbing (MEP) Design & Additional Services** agreements with other Engineers and has the authority to assign services at its sole discretion. As stated in **Section 5.4** herein, Engineer understands and agrees that City makes no minimum guarantees with regard to the amount of work, if any, which Engineer may be extended under this Agreement.

4.2 This Agreement is an On-Call Agreement, Task Order, or indefinite delivery agreement for **On-Call Mechanical, Electrical and Plumbing (MEP) Design & Additional Services** and other such services that are required for Engineer to provide or are associated with a **Professional Engineering Services**. 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.

4.3 Engineer 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, Engineer shall provide staff for regular, overtime, night, weekend, and holiday service, as requested by Department. Persons retained by Engineer to perform work pursuant to this Agreement shall be employees or subcontractors of Engineer.

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

4.5 Engineer, in consideration for the compensation herein provided, shall render the professional services described in this **Section IV** necessary for the advancement of the Project to Substantial Completion.

4.6 Engineer shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein and in each authorized Task Order, in accordance with the Engineer's Fee Schedule, which is attached and incorporated herein and labeled as **Exhibit "A"**. The Scope of Services fully shall be described in Engineer'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.

4.7 Engineer's Fee Schedule, which includes pre-priced tasks and/or hourly rates, is incorporated by reference herein and attached hereto and labeled as **Exhibit "A"**.

ARTICLE V.
COMPENSATION

5.1 The Compensation for all services included in this Agreement for the initial term of this Agreement **SHALL NOT EXCEED FIVE HUNDRED THOUSAND ($500,000.00)**. Extension of this Agreement for three (3) additional one-year "Extension Periods" may increase the total amount of this Agreement to an amount **NOT TO EXCEED** two million dollars ($2,000,000.00).

5.2 Engineer 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. City's approval shall be evidenced by the Finalized Task Order executed by both parties in City's Internet-Based Project Management System. Task Orders shall be numbered sequentially starting with number one (1) and must reference this Agreement. Each Finalized Task Order, as entered into City's Internet-Based Project Management System, will become a part of this Agreement.

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

5.4 Engineer understands and agrees that City makes no minimum guarantees with regard to the amount of services, if any; Engineer may be extended under this Agreement.

5.5 Each Task Order amount shall be based on the Scope of Services for a particular Project and shall be based on the Not-To-Exceed pre-priced tasks and/or hourly rates reflected in **"Exhibit 1**" hereto.

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ARTICLE VI.
METHOD OF PAYMENT

6.6 Payments to Engineer shall be in the amount shown on the invoices consistent with the Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are 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.

6.6.1 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 Engineer's proposal/fee schedule, as shown on **Exhibit "1"** hereto and the approved Task Order.

6.6.2 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Engineer entering itemized invoices, along with all required back-up and reference to the individual Task Order within 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.

6.7 Engineer 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. Engineer's failure to make payments within such time shall constitute a material breach of this Agreement, unless Engineer is able to demonstrate to City a bona fide dispute associated with the unpaid Sub-Consultant and its services. Engineer shall include a provision in each of its Sub-Consultant agreements imposing the same payment obligations on the Sub-Consultants as are applicable to Engineer hereunder and, if City so requests, shall provide copies of such payments by Engineer to City. If Engineer fails to make payment promptly to a Sub-Consultant for the Services for which City has made payment to Engineer, City shall be entitled to withhold future payments to Engineer to the extent necessary to protect City.

6.8 Engineer warrants that title to all Services covered by an Application for Payment will pass to City no later than the time of payment. Engineer 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 Engineer's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Engineer or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **ENGINEER 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 ENGINEER.**

6.9 Engineer 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 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 described in fee schedule and/or hourly rates included on **Exhibit "A** hereto.

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6.10 Project Close Out and Final Payment:

6.10.1 Final billing shall indicate "Final Bill - no additional compensation is due to Engineer".

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

6.10.2.1 delays in the performance of Engineer's work;

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

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

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

6.10.2.5 damage to City; or

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

6.10.3 When the above reasons for withholding are removed or remedied by Engineer, 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.

6.10.3.1 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, Engineer 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 Engineer 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.

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

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

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

6.11 **Internet-based Project Management System**. City will administer its services through an Internet-Based Project Management System. In such case, Engineer 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. All invoices shall be submitted through City's Internet-Based Project Management System

ARTICLE VII.
PROJECT INSPECTION SERVICES REQUEST PROCESS

7.1 Necessary inspection requirements will be established with each Project-specific Task Order.

7.2 When Director has a Project for which he/she desires to procure **Professional Engineering Services**, Director shall notify Engineer by issuing a proposed Task Order Request. Each proposed Task Order Request shall include, at minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, or drawings) needed by Engineer to prepare a Proposal, Project schedule and any specific deadlines for performance of **Professional Engineering Services**, any Project specific insurance requirements necessitated by the work which may require additional types of coverages or higher levels of coverage than required by the Agreement and a deadline for providing Director with a Proposal based on the above items.

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

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

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7.5 The Director has the authority to execute a Task Order in City's Internet-Based Project Management System on behalf of 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 the San Antonio City Council.

7.6 Engineer shall not proceed with services until after a finalized Task Order has been executed, Engineer 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 Engineer's sole risk and expense and may not be reimbursable by City.

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

7.8 Each Task Order shall be entered into City's Internet-Based Project Management System and incorporated herein for all purposes. Each Task Order shall be numbered sequentially starting with number one (1) and must reference this Agreement.

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

ARTICLE VIII.
COORDINATION WITH THE CITY

Engineer 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 Engineer in this coordination, City shall make available for Engineer'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 Engineer. However, any and all such information shall remain the property of City and shall be returned by Engineer upon termination or the completion of the Project or if instructed to do so by the Director.

ARTICLE IX.
REVISIONS TO DRAWINGS AND SPECIFICATIONS

9.1 Engineer 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 the Project. After the written approval by City of drawings, reports or other documents and specifications at the end of each phase of Services, any revisions, additions or other modifications made at City's request, which further involve services and expenses to Engineer, shall require an amendment to incorporate such services and associated compensation into this Agreement based on Rates set forth in **Exhibit "A**" hereto.

9.2 The Director may require Engineer to revise the Construction Documents, Phase drawings, drawings, reports or other documents and specifications, at no cost to City, if the lowest bona fide bid received for this Project is in excess of ten percent (10%) of the Estimated Cost of Work, as submitted by Engineer to and accepted by City.

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ARTICLE X.
TIME AND PERIOD OF SERVICE

10.1 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".

10.2 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. In the event such options are exercised and any material provision of the Agreement is modified, such amendment must be approved by the City Council.

10.3 Time is of the essence of this Agreement. Engineer 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 Engineer, these items shall be completed by Engineer before that Task Order is approved.

10.4 Engineer shall not proceed with the next appropriate Task Order without written authorization from the Director. City may elect to discontinue Engineer'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 Engineer's obligations at any time to achieve the required services.

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

10.6 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 XI.
INSURANCE REQUIREMENTS

11.1 Prior to the commencement of any Services under this Agreement, Engineer shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to City's Capital Improvement Management Services Department, which clearly shall be labeled "Engineering Services" 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 original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement, until such certificate and

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endorsements have been received and approved by city's Capital Improvements Management Services Department/Public Works Department/Contract Services Department. No officer or employee other than City's Risk Manager shall have authority to waive this requirement.

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

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

INSURANCE REQUIREMENTS	
1. Worker's Compensation ** Employer's Liability	Statutory $1,000,000/$1,000,000/$1,000,000
2. Commercial General Broad Form (Public) Liability Insurance to include coverage for the following: Premises Operations Independent contractors* Products/completed operations Personal Injury Contractual Liability Fire legal liability*	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its Equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	$1,000,000 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error or omission in the performance of professional services.
*If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

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11.4 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto. Engineer 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. Engineer shall pay any costs incurred resulting from said request. If the City requests a copy/copies of any insurance policy, Engineer 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 Engineer's policy, City shall submit the material to the Texas Attorney General (AG) for an opinion regarding the release of said policy. Engineer 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 Services Division 9th Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

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

(1) Name City and its officers, officials, employees and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability polices;

(2) To the extent not inconsistent with the requirements of the issuing insurance carrier, provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy, if such endorsement is permitted by law and regulations;

(3) Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City; and (4) Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

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

11.7 In addition to any other remedies City may have upon Engineer'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 Engineer to stop performing services hereunder and/or withhold any payment(s) which become due to Engineer hereunder until Engineer demonstrates compliance with the requirements hereof.

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

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11.9 It is agreed that Engineer'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.

11.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

ARTICLE XII.
OWNERSHIP OF DOCUMENTS

12.1 All previously owned documents not relating to this Project, including any original drawings, estimates, specifications and all other documents and data of Engineer, will remain the property of Engineer as instruments of service. However, Engineer understands and agrees that City shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates, specifications and all other documents and data. Any reuse of any documents and data without the specific written verification or adaptation by Engineer shall be at City's sole risk and without liability or legal exposure to Engineer.

12.2 All completed documents submitted by Engineer for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a Texas registered Engineer licensed to practice in Texas.

12.3 Engineer acknowledges and agrees that, upon payment, 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 Project and Agreement and shall be used as City desires. 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. However, any reuse of documents on a different Project, without specific written verification or adaptation by Engineer, will be at City's sole risk and without liability or legal exposure to Engineer.

12.4 Engineer agrees and covenants to protect any and all proprietary rights of City in any materials provided to Engineer. Such protection of proprietary rights by Engineer 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 Engineer by City shall not be released to any third party without the written 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.

12.5 ENGINEER 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 ENGINEER. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY PRIOR-OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). ENGINEER SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY

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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.

12.6 Engineer may make copies of any and all documents and items for its files. Engineer shall have no liability for changes made to or use of the drawings, specifications and other documents by other Engineers and/or architects and/or other persons, subsequent to the completion of the Project. Engineer shall note Engineer's agreement or disagreement with all changes or modifications on all drawings, specifications and other documents by other Engineers and/or architects or other persons outside of Engineer's control, including electronic copies, prior to the completion of the Project.

12.7 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 Engineer. Files in editable electronic media format of text, data, graphics, or other types, (such as .DWG and the REVIT MODEL) which are furnished by Engineer to City only are for convenience of City or a utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Engineer, will be at City's sole risk and without liability or legal exposure to Engineer.

12.8 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Engineer, including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Engineer or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by Engineer 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 Engineer and/or its suppliers.

ARTICLE XIII.
TERMINATION AND/OR SUSPENSION OF WORK

13.1 Right of Either Party to Terminate for Default

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

13.1.2 The party not in default must issue a signed, written Notice of Termination, citing this paragraph, to the other party, declaring the other party to be in default and stating the reason(s) why 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 such 10-day calendar period, commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

13.2 City reserves the right to terminate this Agreement for reasons other than substantial failure by Engineer to perform by issuing a written and signed Notice of Termination, citing this paragraph, 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 Engineer then currently is working, whichever effective termination date occurs first.

13.3 City reserves the right to suspend this Agreement for the convenience of City by issuing a written and signed 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 the total number of days of suspension which may occur. Such suspension shall take effect immediately upon Engineer's receipt of said Notice of Suspension.

13.4 Engineer hereby is given the right to terminate this Agreement in the event a suspension extends for a period in excess of sixty (60) consecutive calendar days. Engineer may exercise its right to terminate by issuing a written and signed Notice of Termination, citing this paragraph, to City after the expiration of sixty (60) consecutive calendar days from the effective date of the suspension. Termination, as defined under this paragraph, shall become effective immediately upon City's receipt of said written and signed Notice of Termination from Engineer.

13.5 The procedures which Engineer will follow upon Receipt of Notice of Termination are:

13.5.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise so directs or Engineer immediately takes action to cure a failure to perform under the cure period set out herein, Engineer immediately shall begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and promptly shall proceed to 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 Engineer successfully has cured a failure to perform, Engineer shall submit a statement to City showing in detail the services performed under this Agreement prior to the effective date of termination. City shall have the option to grant an extension to the time period allowable for the submittal of such statement.

13.5.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits, prepared under this Agreement prior to the effective date of termination, shall be delivered to City, in the form requested by City, as a pre-condition to the payment of final Compensation.

13.5.3 Upon the above conditions being met, City promptly shall compensate Engineer that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previously paid Compensation.

13.5.4 City, as a public entity, has a duty to document the expenditure of public funds. Engineer acknowledges this duty on the part of City. To that end, Engineer further acknowledges that the failure of Engineer to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Engineer of any and all rights or Claims to compensation for services performed under this Agreement and for which Engineer otherwise may be entitled for services performed under this Agreement.

13.6 The procedures Engineer is to follow, upon Receipt of Notice of Suspension, are:

13.6.1 Upon receipt of written Notice of Suspension, which date also shall be the effective date of the suspension, Engineer 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.

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

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

13.6.4 In the event that Engineer elects to exercises its right to terminate one hundred twenty (120) calendar days after the effective suspension date, within thirty (30) days after receipt by City of Engineer's Notice of Termination, Engineer 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.

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

13.6.6 Upon the above conditions being met, City promptly shall compensate Engineer that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previously paid Compensation.

13.6.7 City, as a public entity, has a duty to document the expenditure of public funds. Engineer acknowledges this duty on the part of City. To that end, Engineer further acknowledges that the failure of Engineer to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Engineer of any and all rights or Claims to compensation for services performed under this Agreement and for which Engineer otherwise may be entitled for services performed under this Agreement.

ARTICLE XIV.
INDEMNIFICATION

14.1 Engineer, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all Claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal injury (including death), property damage or other harm for which recovery of damages is sought which may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY ENGINEER'S NEGLIGENT ACT, ERROR, OR OMISSION OF ENGINEER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, ENGINEER OR SUB-CONSULTANT OF ENGINEER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this Agreement. The INDEMNITY provided for in this Article 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 ENGINEER 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.

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14.2 Engineer shall advise City in writing within twenty four (24) hours of any Claim, demand or potential claim against City or Engineer related to or arising out of Engineer's activities under this Agreement.

14.3 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 XV.
CLAIMS AND DISPUTES

15.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, and/or an extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between City and Engineer arising out of or relating to this Agreement. Claims must be initiated by written notice to the other party. Every Claim of Engineer, 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 Engineer by his/her signature) of Engineer, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

15.2 **Time Limit on Claims**. Claims by Engineer or by City must be initiated within twenty one (21) calendar days after occurrence of the event giving rise to such Claim. Claims by Engineer must be initiated by written notice to City. Claims by City must be initiated by written notice to Engineer.

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

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

15.5 **Claims for Consequential Damages**. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for Breach of Contract (such provision to survive any termination following such breach), the following standards will apply to Claims by either Engineer or City:

15.5.1 No consequential damages will be allowed.

15.5.2 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.

15.5.3 No profit will be allowed on any damage Claim by Engineer.

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

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15.7 Alternative Dispute Resolution

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

15.7.2 **Requirement for Senior Level Negotiations**. Before invoking mediation or any other alternative dispute process set forth herein, the parties hereto 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 this or 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 mediation alternative dispute resolution process contained herein.

15.7.3 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for the purposes of applicable rules of evidence.

15.8 Mediation.

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

15.8.2 Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon the written agreement of both parties.
15.8.3 In the event City and Engineer are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days, following the date of the request for mediation, all conditions precedent in this **Article XV** shall be deemed to have occurred.

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

ARTICLE XVI.
SBEDA ORDINANCE COMPLIANCE PROVISIONS SECTION

A. <u>Solicitation Response and Contract Requirements and Commitment</u>

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

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B. 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.

C. Definitions

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

Certification or "Certified" – the process by which the Small Business Office (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") are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

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

circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Engineer shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Engineer and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

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

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

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

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

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

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

Payment – dollars actually paid to Engineers and/or Subcontractors and vendors for City contracted goods and/or services.

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

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

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 (hereafter referred to as "SAMSA"), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

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

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

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

SBE Subcontracting Program – an API in which Prime Engineers or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.
When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by Engineer also may be required to reflect Good Faith Efforts that a Prime Engineer or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a

Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

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

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

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

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

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Engineer or Contractor in furtherance of the Prime Engineer's performance under a contract or purchase order with City. A copy of each binding agreement between Engineer and its Subcontractors shall be submitted to City prior to execution of this contract agreement and any contract modification agreement.
Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Engineer's and/or S/M/WBE firm's performance and payment under City contracts due to the City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

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

D. <u>SBEDA Program Compliance – General Provisions</u>

As Engineer 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 Engineer'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

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procedures are hereby incorporated by reference into this Agreement, and are considered by the parties to this Agreement to be material terms. Engineer voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by City. Without limitation, Engineer further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

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

3. Engineer shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. Engineer immediately shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Engineer's Subcontractor/Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Engineer to replace Subcontractor/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to Subcontractor/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Engineer of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. Engineer 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.

6. Engineer shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is

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later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Engineer's Sub-Consultant/Supplier Utilization Plan, the Engineer shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Engineer and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (b), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONSULTANT affirms that if it is presently certified as an SBE, CONSULTANT agrees not to subcontract more than 49% of the contract value to a non-SBE firm, **and**

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 4. (b), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONSULTANT affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONSULTANT agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm, **and**

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 3. (a), this contract is also being awarded pursuant to the SBE Subcontracting Program. CONSULTANT agrees to subcontract at least ten percent (10%) of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Sub-Consultant / Supplier Utilization Plan that CONSULTANT is required to submit to CITY on a quarterly basis from the date of execution of this contract (except for the last quarter of this contract term, during which CONSULTANT shall submit for each accepted task order) , and that contains the names of the certified SBE Sub-Consultants that were used by CONSULTANT on this contract, the respective percentages of the total prime contract dollar value awarded and performed by each SBE Sub-Consultant, and documentation including a description of each SBE Sub-Consultant's scope of work 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 subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

Upon execution of this Agreement by Engineer, Engineer shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Engineer's reported subcontract participation is accurate. Engineer shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (hereafter referred to as the "Prompt Payment Act") within ten (10) days of receipt of payment from City. In the event of Engineer's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Engineer, and no new City contracts shall be issued to Engineer until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

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3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of Agreement based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of Engineer 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 XVII.
ASSIGNMENT OR TRANSFER OF INTEREST

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

ARTICLE XVIII.
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. 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.

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ARTICLE XIX.
INTEREST IN CITY CONTRACTS PROHIBITED

19.1 Engineer acknowledges that 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.

19.2 Engineer 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 City-owned utilities. An 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: (1) a City officer or employee; his parent, child or spouse; (2) a business entity in which the officer or employee, or his 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; and/or (3) a business entity in which any individual or entity above listed is a sub-Engineer on a City contract, a partner or a parent or subsidiary business entity.

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

ARTICLE XX.
CONFLICTS OF INTEREST DISCLOSURE

20.1 Engineer must disclose if it is associated in any manner with a City Official or employee in a business venture or business dealings. Failure to do so will constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes:

(1) being in a partnership or joint venture with the officer or employee;

(2) having a contract with the officer or employee;

(3) being joint owners of a business; or

(4) 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 having an established business relationship as client or customer.

ARTICLE XXI.
RIGHT OF REVIEW AND AUDIT

21.1 Engineer grants City or its designees the right to audit, examine or inspect, at City's election, all of Engineer's records relating to the performance of the Work under this Agreement during the term of this Agreement and during the retention period herein. The audit, examination or inspection may be

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performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Engineer agrees to retain its records for a minimum of four (4) years, following the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Engineer'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 Engineer 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 any issue in question, and any and all other agreements, sources of information and matters which 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 only during regular business hours. Engineer agrees to allow City's designee access to all of Engineer's Records, facilities and current or former employees of Engineer deemed necessary by City or its designee(s) to perform such audit, inspection or examination. Engineer also agrees to provide adequate and appropriate Work space necessary to City or its designees to conduct such audits, inspections or examinations.

21.3 Engineer shall include this audit clause in any Sub-Engineer, Sub-Consultant, supplier or vendor contract.

ARTICLE XXII.
ENTIRE AGREEMENT

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

ARTICLE XXIII.
VENUE

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 Contract, 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 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.

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If intended for City, to:

Capital Improvements Management
Services Department

Attention: Contract Services
114 West Commerce, 9th Floor
San Antonio, Texas 78205

If intended for Engineer, to:

CONSULTANT

Attention:

With a copy to:

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

ARTICLE XXV.
INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between City and Engineer is that of independent contractor. By the execution of this Agreement, Engineer and City do not change the independent contractor status of Engineer. Engineer 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 workflow and determining how the Services are to be performed. No term or provision of this Agreement, or act of Engineer in the performance of this Agreement, shall be construed as making Engineer the agent, servant or employee of City or as making Engineer or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and/or 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, City of San Antonio has lawfully caused these present to execute this Agreement by the hand of City Manager, or designee; Engineer, acting by the hand of

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_____ thereunto authorized _____ (TITLE) does now sign, execute and deliver this document.

Executed on this ____ day of _____, _____

CITY OF SAN ANTONIO **CONSULTANT**

_____ _____

PETER ZANONI NAME

ASSISTANT CITY MANAGER TITLE

APPROVED:

_____

CITY ATTORNEY

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EXHIBIT A
FEE SCHEDULE

See Attached Proposal Dated _____

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EXHIBIT B
SBEDA PLAN

SUBCONTRACTOR/SUPPIER UTILIZATION PLAN

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