

**PROFESSIONAL SERVICES AGREEMENT
FOR ON CALL GEOTECHNICAL AND
CONSTRUCTION MATERIALS TESTING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

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

**NAME OF FIRM
ADDRESS
CITY, STATE, & ZIP CODE**

Engineer(s), duly licensed, and practicing under the laws of the State of Texas, hereinafter termed "CONSULTANT", said Agreement being executed by the CITY pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the CONSULTANT for geotechnical and construction materials testing services hereinafter set forth in connection with the above designated Project for the City of San Antonio.

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**ARTICLE I.
DEFINITIONS**

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

- 1.1 "CITY" and "Owner" means to the City of San Antonio, Texas.
- 1.2 "CONSULTANT" means **NAME OF CONSULTANT** and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, and all other persons or entities for which the CONSULTANT is legally responsible.
- 1.3 "Director" means the Director of CITY's Capital Improvements Management Services Department, Public Works Department or the designated project manager identified by the Notice to Proceed.
- 1.4 "Work Task" means the capital improvement/construction development undertaking of CITY for which CONSULTANT's services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.
- 1.5 "Proposal" means Consultant's Proposal to provide services for each Work Task .
- 1.6 "Unit Price" means the price provided by Consultants for each test.
- 1.7 "Total Compensation" means not to exceed amount of each work task based on proposal issued in this agreement
- 1.8 "Scope of Services" mean the services described in Article IV Scope of Services and as defined by each work task.
- 1.9 "Owner Designated Representative (ODR) means person designated by Owner to act for Owner.
- 1.10 "Plans and Specifications" means the construction documents.
- 1.11 "Consultant Schedule of Services" means the values allocated to materials and various portions of the work, prepared in such form, and supported by such data to substantiate its accuracy as Owner may require.
- 1.12 "Invoice" means written form for a request from CONSULTANT to be paid for completed work.

**ARTICLE II.
COMPENSATION**

- 2.1 The Compensation for all services included in this Agreement for the initial two (2) year term SHALL NOT EXCEED \$750,000.00. Extension of this agreement for two (2) additional two (2) year "Extension Periods" may increase the total amount of this AGREEMENT to an amount not to exceed _____.
- 2.2 CONSULTANT shall complete a Proposal for each Work Task that the City requests to be performed under this AGREEMENT. Proposals shall be numbered sequentially starting with number one and must reference this contract. The CITY will either approve or disapprove each Proposal. Once a

Proposal is approved, as evidenced by a written acceptance executed by the Director or his designee, it will become a part of this AGREEMENT. For street and drainage projects, compensation shall be based on unit price provided by the consultant during contract negotiations.

- 2.3 CONSULTANT must obtain the prior written approval of the CITY for any additional services not described in the Contract Documents. Proposals for additional services which are not included in the Documents (not described in the Exhibits hereto), must be approved by the Director as being appropriately within the scope of the AGREEMENT.
- 2.4 A negotiated fixed price, hourly, or lump-sum amount for each Work Task may be derived based on the Scope of Services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in "Exhibit 1".
- 2.5 Payments to the CONSULTANT shall be in the amount shown on the invoices consistent with the approved proposal and its supporting documentation submitted, and shall be subject to the CITY'S approval. All services shall be performed to the CITY'S satisfaction, which satisfaction shall be judged by the Director in his or her sole discretion, and the CITY shall not be liable for any payment under this AGREEMENT for services which are unsatisfactory and which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data, and documents have been submitted, received, accepted and approved by the CITY.
 - 2.5.1 Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each additional service as may be described in CONSULTANT's proposal/fee schedule (Exhibit "1") and the approved proposal.
 - 2.5.2 Monthly payments for work performed in the various testing services will be made to CONSULTANTS upon CONSULTANT'S furnishing itemized invoices referencing the individual Proposal, in a form acceptable to the Director, indicating the value of additional services performed to date on that work order and any other invoices or payments made related to that Proposal.
 - 2.5.3 CONSULTANT must obtain the prior written approval of the CITY for any additional line items not described in the Contract Documents. Proposals for additional services which are not included in the Documents (not described in the Exhibits hereto), must be approved by the Director as being appropriately within the scope of the AGREEMENT.
- 2.6 The CONSULTANT shall, within ten (10) days following receipt of Compensation from the Owner, pay all bills for services performed and furnished by others in connection with the Work Task and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. CONSULTANT'S failure to make payments within such time shall constitute a material breach of this Agreement, unless the CONSULTANT is able to demonstrate to Owner bona fide disputes associated with the unpaid subconsultant and its work. CONSULTANT shall include a provision in each of its subagreements imposing the same payment obligations on the subconsultants as are applicable to the CONSULTANT hereunder, and if the Owner so requests, shall provide copies of such payments by the CONSULTANT to the Owner. If the CONSULTANT has failed to make payment promptly to the subconsultant for the Work for which the Owner has made payment to the CONSULTANT, the Owner shall be entitled to withhold payment to the CONSULTANT to the extent necessary to protect the Owner.
- 2.7 The CONSULTANT warrants that all Work covered by an Invoice will pass to the Owner no later than the time of payment. The CONSULTANT further warrants that upon submittal of an Invoice, all Work for which Invoice have been previously issued and payments received from the Owner shall, to the best of the CONSULTANT'S knowledge, information and belief be free and clear of liens, claims, security interests or encumbrance in favor of the CONSULTANT, or other persons or entities making a claim by reason of having provided labor or services relating to the Work. **CONSULTANT SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR**

ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONSULTANT.

**ARTICLE III.
METHOD OF PAYMENT**

- 3.1 CONSULTANT may submit a request for Partial Compensation prior to submittal of a final Invoice in this Article Payment shall be made based solely on the tasks completed and approved by the Director, and the associated unit price for each Work Task as may be described in fee schedule and/or hourly rates included in Exhibit "1".
- 3.1.1 CONSULTANT agrees to submit a statement of release with the final billing notifying the CITY that there are no further payments owed to the CONSULTANT by the CITY beyond the final bill. Final billing shall indicate "Final Bill - no additional payments are due to CONSULTANT".
- 3.1.2 The Owner may withhold payment to such extent as may be necessary, in the Owner's opinion, to protect the Owner from damage or loss for which the CONSULTANT is responsible, because of:
- 3.1.2.1 delays in the performance of the CONSULTANT's work;
- 3.1.2.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the CONSULTANT;
- 3.1.2.3 failure of the CONSULTANT to make payments properly to subconsultants or vendors for labor, materials or equipment;
- 3.1.2.4 reasonable evidence that the CONSULTANT's work cannot be completed for the amount unpaid under this Agreement or approved Proposals;
- 3.1.2.5 damage to the Owner; or
- 3.1.2.6 persistent failure by the CONSULTANT to carry out the performance of its services in accordance with this Agreement.
- 3.1.3 When the above reasons for withholding are removed or remedied by the CONSULTANT, payment of the amount withheld will be made within a reasonable time. The Owner shall not be deemed in default by reason of withholding payment as provided for in this Article.
- 3.1.3.1 In the event of any dispute(s) between the parties regarding the amount properly payable for any Phase or as final payment, or regarding any amount that may be withheld by the Owner, the CONSULTANT shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event CONSULTANT does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- 3.1.3.3 Acceptance of final payment by the CONSULTANT shall constitute a waiver of claims except those previously made in writing and identified by CONSULTANT as unsettled at the time of final invoice.

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

3.2 Internet-based Project Management Systems. Owner will administer its services through an Internet-Based Management System. In such case, the CONSULTANT shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes vouchers, or invoices and processing, amendments, change orders. The Owner shall administer the software, shall provide training to Consultant, and shall make the software accessible via the Internet to the Consultant

3.2.1 Prior Any changes to the consultants schedule of services. Once approved, will be processed and approved as task orders through the portal.

ARTICLE IV. SCOPE OF SERVICES

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

4.2 The general scope for this project shall be comprised of geotechnical and construction materials testing services.

4.2.1 Geotechnical engineering services may include geotechnical site investigation and geotechnical laboratory testing.

4.2.2 Construction materials testing services to include all tests and inspections required by 2009 International Building Code, or such version or portions thereof adopted by the City, and City of San Antonio amendments to such a code.

4.2.3 Material testing for street and drainage projects shall be as required by plans and specifications

4.2.4 Other geotechnical and materials testing may also be required.

4.3 All work will include engineering or scientific interpretation, field and laboratory services and reports as required by the City. All tests will be conducted under the guidance and direction of a registered professional engineer or professional licensed to work in the State of Texas, as required by law.

4.4 CONSULTANT will provide four (4) copies of each report – two (2) to the City, one (1) to the contractor, and one (1) to design consultant (engineer or architect). Consultant to provide two (2) copies of the draft geotechnical report for review, one (1) to the City and one (1) to the design consultant prior to preparing and completing final geotechnical report.

4.5 Testing reports will include the following items:

- a. Report date.
- b. Date of service, project title and limits.
- c. Testing lab letterhead with authorized signature – professional engineer, or appropriate licensed professional required by law in charge or his delegated assistant.
- d. Report identification number (sequential numbering), description, price agreement service number(s) of items performed, quantity performed and location.
- e. Test results.
- f. Contract standards controlling the test(s).

- g. Compliance or noncompliance with the specifications.
 - h. Any extenuating circumstances affecting the test(s) or results(s).
 - i. Observations to include service time chargeable to delays, rescheduling and overtime premiums.
 - j. If manpower is involved, provide names, classifications, and hours.
 - k. Number of trips with work performed on the project.
 - l. Name of person who orders the test(s).
 - m. Identify and log any and all retest services. All failed tests to be logged with original test date and results, as well as any and all retest dates and results, and the date and results of final passing test.
- 4.6 The CONSULTANT shall not commence work until receipt of their approved and signed Proposal. Should the scope subsequently change, either the CONSULTANT or the CITY may request a review of the anticipated services, with an appropriate adjustment in compensation.
- 4.7 The CONSULTANT, in consideration for the compensation herein provided, shall render the professional services described in this Section including reports and documentation as acceptable to the Director, or his duly authorized representative, hereinafter termed "Director", subject to other provisions of this Agreement.
- 4.8 The CONSULTANT will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The CONSULTANT'S efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will generally conform to the Contract Documents.
- 4.9 The CONSULTANT will not be responsible for the CONSTRUCTION CONTRACTOR'S failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT will not have control over or charge of and will not be responsible for acts or omissions of the CONSTRUCTION CONTRACTOR, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work.
- 4.10 Communications by and with the CONSULTANT's subconsultants shall be through the CONSULTANT. Communications by and with Subcontractors and material suppliers shall be through the CONSTRUCTION CONTRACTOR.

**ARTICLE V.
RESERVED**

- 5.1 (Reserved)

**ARTICLE VI.
TIME AND PERIOD OF SERVICE**

- 6.1 The term of this AGREEMENT shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for an initial period of two (2) year, hereinafter referred to as the "Initial Term". The City, at its sole discretion may extend this Agreement for two (2) additional two (2) year periods, referred to as Extension Periods. The Director shall have the authority to exercise the Extension Periods without further action by the San Antonio City Council, subject to the appropriation of funds.
- 6.2 Time is of the essence of this Agreement. The CONSULTANT shall perform and complete its obligations for the various Tasks of work under Article IV "Scope of Services" of this

Agreement in a prompt and continuous manner so as to not delay the development of the design work and so as to not delay the construction of the work for the Project in accordance with the schedules approved by the CITY with the CONSTRUCTION CONTRACTOR.

- 6.3 The CITY may elect to discontinue the CONSULTANT's services at the end of any Work Task for any reason. However, if circumstance dictates, the Director may make adjustments to the scope of the CONSULTANT's obligations at any time.
- 6.4 The CONSULTANT shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond CONSULTANT's reasonable control.

**ARTICLE VII.
COORDINATION WITH THE CITY**

- 7.1 The CONSULTANT shall hold periodic conferences with the Director or his representatives up to the completion of the Work Task To assist the CONSULTANT in this coordination, the CITY shall make available for the CONSULTANT's use in providing the service, all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and to this particular Project, at no cost to the CONSULTANT. However, any and all such information shall remain the property of the CITY and shall be returned by the CONSULTANT upon termination or completion of the Work Task or if instructed to do so by the Director.
- 7.2 The Director will act on behalf of, the CITY with respect to the work to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the CONSULTANT's services.
- 7.3 The CITY will give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of any defect in the CONSULTANT's services or any development that affects the scope or timing of the CONSULTANT's services.

**ARTICLE VIII.
REVISIONS TO DOCUMENTS**

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

**ARTICLE IX.
OWNERSHIP OF DOCUMENTS**

- 9.1 The CONSULTANT acknowledges and agrees that the CITY shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Agreement and shall be used as the CITY desires and documents, including the reports and data shall be delivered to the CITY at no additional cost to the CITY upon request or termination or completion of this AGREEMENT without restriction on future use.
- 9.2 The CONSULTANT agrees and covenants to protect any and all proprietary rights of the CITY in any materials provided to the CONSULTANT. Such protection of proprietary rights by the CONSULTANT shall include, but not be limited to, the inclusion in any copy intended

for publication of copyright mark reserving all rights to the CITY. Additionally, any materials provided to the CONSULTANT by the CITY shall not be released to any third party without the consent of the CITY and shall be returned intact to the CITY upon termination or completion of this Agreement or if instructed to do so by the Director.

- 9.3 The CONSULTANT hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Agreement to the CITY, including all equitable rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this Agreement shall be subject of an application for copyright by the CONSULTANT. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of the CITY (excluding any instrument of services, unless otherwise specified herein). The CONSULTANT shall, at its expense, defend all suits or proceedings instituted against the CITY and pay any award of damages or loss resulting from an injunction, against the CITY, insofar as the same are based on any claim that materials or work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.
- 9.4 The CONSULTANT may make copies of any and all documents and items for its files.
- 9.5 Copies of documents that may be relied upon by the CITY are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by the CONSULTANT. Files in editable electronic media format of text, data, graphics, or other types, (such as DWG) that are furnished by the CONSULTANT to the CITY or utility are only for convenience of the CITY or utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 9.6 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CONSULTANT, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by CONSULTANT or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the CONSULTANT to provide the services or protect deliverables to CITY, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of CONSULTANT or its suppliers.

ARTICLE X. TERMINATION AND/OR SUSPENSION OF WORK

- 10.1 Right of Either Party to Terminate for Default
- 10.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure as provided in this Paragraph 10.1.
- 10.1.2 The party not in default must issue a signed, written notice of termination (citing this paragraph) to the other party declaring the other party to be in default and stating the reason(s) why they are in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.
- 10.2 Right of CITY to Terminate
- 10.2.1 The CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the CONSULTANT to perform by issuing a signed, written notice

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

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

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

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

10.4 Procedures CONSULTANT to follow upon Receipt of Notice of Termination

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

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

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

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

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

10.5 Procedures CONSULTANT to Follow upon Receipt of Notice of Suspension

- 10.5.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the CONSULTANT shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.
- 10.5.2 CONSULTANT shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
- 10.5.3 Copies of all completed or partially completed designs, plans, and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the CITY but shall be retained by the CONSULTANT until such time as CONSULTANT may exercise the right to terminate.
- 10.5.4 In the event that CONSULTANT exercises the right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt by the CITY of CONSULTANT's notice of termination, CONSULTANT shall promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
- 10.5.5 Any documents prepared in association with this Agreement shall be delivered to the CITY as a pre- condition to final payment.
- 10.5.6 Upon the above conditions being met, the CITY shall promptly pay the CONSULTANT that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.
- 10.5.7 The CITY, as a public entity, has a duty to document the expenditure of public funds. CONSULTANT acknowledges this duty on the part of the CITY. To this end, CONSULTANT understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the CONSULTANT of any portion of the fee for which CONSULTANT did not supply such necessary statements and/or documents.

**ARTICLE XI.
CONSULTANT'S WARRANTY**

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

**ARTICLE XII.
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

12.1 DEFINITIONS

- 12.1.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:
- 12.1.2 SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 12.1.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 12.1.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.
- 12.1.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONSULTANT’s submittal for this project Agreement, attached hereto and incorporated herein as “Exhibit 3”.

12.2 For this Agreement, the Parties agree that:

- 12.2.1 The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- 12.2.2 The failure of CONSULTANT or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.3 Failure of CONSULTANT or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONSULTANT’s SBEDA Plan (“Exhibit 3”) shall constitute a material breach of the SBEDA Program and this Agreement.

12.2.5 CONSULTANT shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment 4") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONSULTANT to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

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

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

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

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

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

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

12.4.1 Terminate this Agreement for default;

12.4.2 Suspend this Agreement for default;

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

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

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

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

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

- 12.5 **City Process for Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.
- 12.6 **Special Provisions for Extension of Agreements.** In the event the CITY extends this Agreement without a competitive Bid process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:
- 12.6.1 A SBEDA Utilization Goal for the extended period; and
- 12.6.2 A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and
- 12.6.3 The required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
- 12.6.3.1 Subject CONSULTANT to any of the remedies listed above; and/or
- 12.6.3.2 Result in resolicitation of the Agreement that was considered for extension.

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

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

ARTICLE XIV. INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any work under this Agreement, the CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Capital Improvements Management Services Department/Contract Services, which shall be clearly labeled "**Geotechnical and Construction Materials Testing 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. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized

representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Capital Improvements Management Services Department. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.

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

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

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

14.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies in the event a claim is filed, declarations page and all endorsements thereto as they apply to the limits required by the CITY.

If the City requests a copy (ies) of any insurance policy the CONSULTANT may prominently mark those portions of the policy it regards as confidential. In the event a third party makes an open records request under the Texas Public Information Act, or other public information law, asking to view or copy the policy, the City shall submit the material to the Texas Attorney General ("AG") for an opinion regarding the release of said policy. CONSULTANT and City agree that the City will be bound by the AG opinion. Similarly, the City would respond to provide the material under a court order or a litigation discovery rule which may require or direct disclosure of the information.

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

- Name the CITY and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation, employer's liability and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY; and
 - Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 14.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, the CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 14.7 In addition to any other remedies the CITY may have upon the CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the CONSULTANT to stop work hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the requirements hereof.
- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which the CONSULTANT may be held responsible for payments of damages to persons or property resulting from the CONSULTANT's or its sub-consultant's performance of the work covered under this Agreement.
- 14.9 It is agreed that the CONSULTANT's commercial general liability insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.
- 14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- 14.11 CONSULTANT and its subcontractors are responsible for all damages to their own equipment and/or property.

ARTICLE XV. INDEMNIFICATION

- 15.1 The CONSULTANT, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS,

EMPLOYEES, DIRECTORS AND REPRESENTATIVES. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 15.2 The CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the CONSULTANT, known to the Consultant, related to or arising out of the CONSULTANT's activities under this Agreement.
- 15.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights contractual or otherwise, to any other person or entity.
- 15.4 Acceptance of the final reports and documents by the CITY shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their work, nor shall such acceptance be deemed an assumption of responsibility or liability by the CITY for any defect in the documents and work prepared by said CONSULTANT, its employees, subcontractors, and agents.

ARTICLE XVI. CLAIMS AND DISPUTES

- 16.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, and extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and CONSULTANT arising out of or relating to the Agreement. Claims must be initiated by written notice. Every Claim of the CONSULTANT, whether for additional compensation, additional time, or other relief shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the CONSULTANT by his signature) of the CONSULTANT, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 Time Limit on Claims. Claims by the CONSULTANT or by the Owner must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the CONSULTANT must be initiated by written notice to the Owner. Claims by the Owner must be initiated by written notice to the CONSULTANT.
- 16.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, the CONSULTANT shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Agreement.
- 16.4 Claims for Additional Time. If the CONSULTANT wishes to make Claim for an increase in the time for performance, written notice as provided in this Section 16 shall be given. The CONSULTANT's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 16.5 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the CONSULTANT and to claims by the Owner:

- 16.5.1 No consequential damages will be allowed.
- 16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
- 16.5.3 No profit will be allowed on any damage claim.
- 16.6 **No Waiver of Governmental Immunity. NOTHING IN THIS PARAGRAPH 15 SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**
- 16.7 Alternative Dispute Resolution.
- 16.7.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement unless it would be impossible or impracticable under the circumstances.
- 16.7.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- 16.7.3 Mediation.
- 16.7.3.1 In the event that the Owner or the CONSULTANT shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
- 16.7.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.
- 16.7.3.3 In the event the Owner and the CONSULTANT are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- 16.7.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

**ARTICLE XVII.
SEVERABILITY**

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

**ARTICLE XVIII.
INTEREST IN CITY CONTRACTS PROHIBITED**

- 18.1 No officer or employee of the CITY shall have a financial interest, directly or indirectly, in any contract with the CITY, or shall be financially interested, directly or indirectly, in the sale to the CITY of any land, materials, supplies or service, except on behalf of the CITY as an officer or employee. This prohibition extends to the City Public Service Board, the SAWS, and other CITY boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on CITY projects.
- 18.2 The CONSULTANT acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any the CITY agency such as the CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 18.3 The CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. The DESIGN CONSULTANT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

**ARTICLE XIX.
CONFLICTS OF INTEREST DISCLOSURE**

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

**ARTICLE XX.
STANDARD OF CARE/LICENSING**

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

- 20.2 The CONSULTANT shall be represented by a registered professional Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the work, including preconstruction meetings.
- 20.3 The 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.

**ARTICLE XXI.
RIGHT OF REVIEW AND AUDIT**

- 21.1 The CONSULTANT agrees that the CITY may review any and all of the work performed by the CONSULTANT under this Agreement. The CITY is granted the right to audit, at the CITY's election, all of the CONSULTANT's records and billings related to performance of this Agreement. The CONSULTANT agrees to retain such records for a minimum of four (4) years following completion of this Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to the CITY's rights as may be disclosed by such audit.

**ARTICLE XXII.
ENTIRE AGREEMENT**

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

**ARTICLE XXIII.
VENUE**

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

**ARTICLE XIV.
NOTICES**

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

If intended for the CITY, to:

Capital Improvements Management
Services Department
Attention: Debbie Sittre,
Assistant Director
114 West Commerce, 5th Floor
San Antonio, Texas 78205

If intended for the CONSULTANT, to:

Name of Firm.
Attention: Name of Firm Representative
Title of Representative
Address
City, State, Zip Code

**ARTICLE XXV.
INDEPENDENT CONTRACTOR**

EXHIBIT 1

APPROVED PRE-PRICED TASKS AND/OR HOURLY RATES

EXHIBIT 2
TASK ORDER TEMPLATE

EXHIBIT 3
CONSULTANT FEE PROPOSAL

(CONSULTANT'S FEE PROPOSAL)

Construction Material Test		Applicable COSA Specification Item(s)	Applicable COSA Test Methods	Unit	Price
1	Moisture-Density Relationship	104, 105, 106, 107, 108, 109, 200, 201, 236, 306, 400	TEX-113-E, TEX-114-E, TEX-120-E, TEX-121-E	Each	
1A	Moisture-Density Relationship (no additional trip required to sample)			Each	
2	Atterberg Limits Determination (in conjunction with Moisture-Density Relationship)	104, 105, 106, 107, 200, 236, 306, 400	TEX-104-E, TEX-105-E, TEX-106-E, TEX-107-E	Each	
2A	Atterberg Limits Determination (with sampling and travel charges)			Each	
2B	Atterberg Limits Determination			Each	
3	Sieve Analysis (with sampling and travel charges)	200	TEX-110-E, Part I and II	Each	
3A	Sieve Analysis			Each	
4	Field Density Test (1-3 Per Set)	104, 105, 106, 107, 108, 109, 200, 201, 236, 306, 400, 412	TEX-115-E	Set	
5	Field Density Test (each additional on same call out)			Each	
6	Concrete Compressive Strength Test (4 Cylinder Set)	106, 209, 300, 306, 400	TEX-418-A or ASTM C 39	Set	
6A	Concrete Compressive Strength Test (additional 4 Cylinder Set)			Set	
6B	Concrete Testing (4 Cylinder Set) in excess of 1 hour per cylinder set		Hour		
7	Concrete Compressive Strength Test (6 Cylinders Set)		TEX-418-A or ASTM C 39	Set	
7A	Concrete Compressive Strength Test (additional 6 Cylinders Set)			Set	
7B	Concrete Testing (6 Cylinder Set) in excess of 1.5 hour per cylinder set		Hour		
8	Asphalt Cores of In-Place Asphalt Paving (2 Per Set with travel charges)		205, 206, 240	TEX-207-E Part I	Set
8A	Asphalt Cores of In-Place Asphalt Paving (additional 2 Per Set on same call out)	Set			
9	L.A. Abrasion Test (with sampling and travel charges)	205, 240, 300	ASTM C 131	Each	
9A	L.A. Abrasion Test			Each	
10	Stand-By Time			Hour	
11	Asphalt Concrete Sampling, Moisture Content, Gradation, Bitumen Content, Laboratory Density and Rice Gravity (with sampling and travel charges)	205, 206	TEX-222-F, TEX-212 Part II, TEX-200-F, TEX-236-F, TEX-207-E Part I, TEX-227-F	Each	
11A	Asphalt Concrete Sampling, Moisture Content, Gradation, Bitumen Content, Laboratory Density and Rice Gravity			Each	
11B	Asphalt Mix Design Verification	205, 206	TEX-204-F, Part I	Each	
11C	Warm Mix Design Verification	240	TEX-204-F, Part IV	Each	
12	Asphalt, Oils and Emulsions (with sampling and travel charges)	205, 206, 207, 236, 239, 240	TEX-500-C	Each	
12A	Asphalt, Oils and Emulsions (additional on same call out)			Each	
13	Welded Wire Fabric - Gauge thickness (with sampling and travel charges)	303	ASTM A 185 or A 497	Each	
13A	Welded Wire Fabric - Gauge thickness			Each	
14	Brick Testing (with sampling and travel charges)			Each	
14A	Brick Testing			Each	
15	Slurry Seal (field measurement of slurry seal application)	207, 239	Tex-200-F, Part II (washed), TEX-236-F	Each	
16	Fence Post and Rail (weight and coating thickness with sampling and travel charges)	507, 508	ASTM F 1083	Each	
16A	Fence Post and Rail (weight and coating thickness)			Each	
17	Sample Charge			Each	
18	Flowable Fill Shrinkage	106, 306, 400	ASTM C 827	Each	
19	Flowable Fill Consistency			Each	
20	Hamburg Wheel test	205, 240	Tex-242-F	Each	
21	Boil test			Each	
22	Segregation (density profile)			Each	
23	Longitudinal joint density			Each	
24	Thermal profile			Each	
25	Ride Quality			Each	
26	Tack Coat Adhesion			Each	
27	Flexible Base Classification or Verification (w/o RAP)			200	TEX-110-E, TEX-104-E, TEX-106-E, TEX-116-E
28	Flexible Base Classification or Verification (w/RAP)	Each			
29	Verification of Performance Graded Binders	205, 206, 240	TxDOT Item 300.2.J, AASHTO T48, T313, T314, T315, ASTM D 6084, TEX-541-C	Each	
30	Verification of Emulsified Asphalt (w/o Polymer Modifiers)	202, 203, 204	TxDOT Item 300.2.D, AASHTO T72, T59, T49, T44, T51, T50	Each	
31	Verification of Emulsified Asphalt (w/Polymer Modifiers)			Each	

EXHIBIT 4
SBEDA PLAN