PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

FOR ENGINEERING SERVICES FOR PROJECT SCOPING AND COST ESTIMATING SERVICES FOR THE PROPOSED 2017-2022 BOND PROGRAM

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

_____

_____

_____

an Engineer duly licensed and practicing under the laws of the State of Texas **(**hereafter referred to as "Consultant") (City and Consultant hereafter individually referred to as “a Party” and collectively referred to as “the Parties”), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for **ENGINEERING SERVICES** set forth herein in connection with the above designated Project for City.

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ARTICLE I

DEFINITIONS

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

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

1.2 “CCMS” means City’s Contract Management System whereby payments made by Consultants to, and confirmed by, Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.

1.3 "City" means City of San Antonio, Texas.

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

1.5 "Consultant" means _____ and its officers, partners, employees, agents and representatives, and all Sub-Consultants, if any, as well as all other persons or entities for which Consultant legally is responsible.

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

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

1.8 "Plans and Specifications" means the construction documents.

1.9 “PRIME*Link*” means City’s internet-based, project management software for approving Task Orders and Applications for Compensation.

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

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

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

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

ARTICLE II
COMPENSATION

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

2.2 **Reimbursable Expenses**. When authorized by City in writing, the Consultant shall be entitled to reimbursement at actual incurred cost for services and related expenses for the following items:

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

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

2.2.3 Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs shall not exceed the amount noted in Article IV herein without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City.

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

2.3 **Sub-Consultant Work**. City shall not pay a markup to Consultant for Sub-Consultant work.

ARTICLE III
METHOD OF PAYMENT

3.1 Payments to Consultant shall be in the amount shown on the invoices and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed in accordance with the professional standard of care set forth in **Section 20.1** herein and 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 shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

3.1.1 Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Compensation for Additional Professional Services (attached hereto, incorporated by reference herein and labeled as "**Exhibit 1"**).

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

3.2 Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants, in connection with the Project and the performance of the work, and shall provide City with evidence of such payment through City's electronic Contract Management System ("CCMS"). Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid Sub-Consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the Sub-Consultants as are applicable to Consultant hereunder, and shall require Sub-Consultants to provide confirmation to City of receipt of payments through CCMS. If Consultant has failed to make payment promptly to the Sub-Consultant for the Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City except in the event of a valid dispute between Consultant and that Sub-Consultant.

3.3 Consultant warrants that title to all Services covered by an Application for Payment shall pass to City no later than the time of payment. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO**

CONSULTANT.

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

3.5 Project Close Out and Final Payment:

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

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

3.5.2.1 delays in the performance of Consultant's work;

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

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

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

3.5.2.5 damage to City; or

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

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

3.5.3.1 In the event of any dispute(s) between the Parties, regarding the amount properly compensable for any Phase or as final compensation, or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely

manner and as required by the terms thereof, any such claim shall be waived.

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

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

3.5.3.4 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services or 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. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

3.6 **Internet-Based Project Management Systems**. City shall administer its services through an Internet-Based Project Management System (hereafter referred to as "PRIMELink"). In such case, Consultant shall conduct communication through PRIMELink and perform all Project-related functions utilizing PRIMELink, with the exception of Sub-Consultant payment monitoring activities through CCMS. This includes correspondence, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and other administrative activities. City shall administer the PRIMELink software, shall provide PRIMELink 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 PRIMELink.

ARTICLE IV
SCOPE OF SERVICES
[SUBJECT TO REVISION AS APPLICABLE]

4.1 Consultant shall provide Engineering Services and include in its Scope of Services all associated services required for Consultant to provide such Services, pursuant to this Agreement, and any and all Services which normally would be required by law or common due diligent practice.

4.2 Consultant shall comply with the standards of City's Design Guidance Manual throughout the duration of the subject Project and this Agreement, unless specifically and explicitly excluded from doing so in the approved Scope of Services attached hereto, incorporated by reference herein and labeled as "**Exhibit 3"** and as described in this **Article IV**.

4.3 Consultant shall adhere to the requirements of the design phases described in City's Design Guidance Manual, to include performing the tasks and submitting deliverables as

described therein, unless specifically and explicitly excluded in the approved Scope of Service in **"Exhibit 3"** hereto and as described in this **Article IV.**

4.4 Consultant acknowledges and accepts its responsibilities, as defined and described in City's General Conditions for City of San Antonio Construction Contracts, attached hereto, incorporated by reference herein and labeled as "**Exhibit 4"**.

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

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

4.7 Consultant, in consideration for the compensation herein described, shall render the professional services described in this **Article IV** necessary for the advancement of the Project through Substantial Completion to Final Completion.

4.8 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein and in accordance with the Compensation for Additional Professional Services, attached and incorporated herein and labeled as **"Exhibit 3"**. The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with and approval by City for each authorized service task and as provided in this Agreement.

4.9 Compensation for Additional Professional Services, which includes pre-priced tasks and/or hourly rates, is described in **"Exhibit 1"**hereto.

4.10 Consultant shall submit three (3) sets of Plans and Specifications, addressed to City Engineer's Office, for use by City Engineer, Project Manager and Building Maintenance Department.

ARTICLE V
TIME AND PERIOD OF SERVICE

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

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

5.3 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond Consultant's reasonable control. Within twenty one (21) calendar days from the occurrence of any event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines that Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement.

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

ARTICLE VI
(RESERVED)

ARTICLE VII
COORDINATION WITH CITY

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

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

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

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

ARTICLE VIII
REVISIONS TO DOCUMENTS

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

ARTICLE IX
OWNERSHIP OF DOCUMENTS

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

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

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

9.4 Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that, in part or in whole, was produced from this Agreement is the property of City, including all equitable rights. No reports, maps, documents or other copyrightable works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of City (excluding any instrument of services, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same are based on any claim that materials or work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

9.5 Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by City, other Consultants and/or engineers and/or other persons, subsequent to the completion of the Project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other Engineers or other persons, including electronic copies, subsequent to the Final Completion of the Project. Following Final Completion of the Project, if City requests Consultant perform additional scope beyond that listed in "**Exhibit 3"** hereto, City appropriately shall compensate Consultant for such additional scope work performed by Consultant.

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

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

ARTICLE X
TERMINATION AND/OR SUSPENSION OF SERVICES

10.1 Right of Either Party to Terminate for Default

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

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

10.2 **Right of City to Terminate**. City reserves the right to terminate this Agreement, for reasons other than substantial failure by Consultant to perform, by issuing a signed Notice of Termination, citing this **Paragraph 10.2**, which shall take effect on the twentieth (20th) calendar day following receipt of said notice or upon the scheduled completion date of the performance phase in which Consultant then currently is working, whichever effective termination date occurs first.

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

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

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

10.4 Procedures Consultant to follow upon Receipt of Notice of Termination

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

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

10.4.3 Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, City promptly shall pay Consultant that proportion of the

prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of the fee.

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

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

10.5 Procedures Consultant to Follow upon Receipt of Notice of Suspension

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

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

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

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

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

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

10.5.7 City, as a public entity, has a duty to document the expenditure of public funds.

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

ARTICLE XI
CONSULTANT'S WARRANTY

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

ARTICLE XII
NON-DISCRIMINATION POLICY

12.1 Non-Discrimination. As a Party to a contract with City, Consultant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consultant represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and shall continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This **Section 12.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-

Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

12.2 Sub-Consultants. Upon execution of this Agreement by Consultant, Consultant shall provide to City a detailed outreach and diversity plan for approval by City, including a list of Sub-Consultants and shall require all of its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's Internet-Based Project Management System. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any Sub-Consultant from this Project.

ARTICLE XIII
ASSIGNMENT OR TRANSFER OF INTEREST

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

ARTICLE XIV
INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "Engineering Services for Project Scoping and Cost Estimating Services for the proposed 2017-2022 Bond Program" **Project** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by Consultant, attesting that the furnished Certificate(s) represent Consultant's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and telephone number. The Certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Department – Contract Services Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

14.2 City reserves the right to review the insurance requirements of this **Article XIV** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and 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 shall City allow modification whereby City may incur increased risk.

14.3 Consultant's financial integrity is of interest to City; therefore, subject to Consultant's obligation to maintain reasonable deductibles in such amounts as are approved by Consultant's insurance companies, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the

following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects. If a project does not justify these standard limits of insurance coverages, Consultant may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/Impact - sufficiently broad to cover disposal liability *e. Explosion, Collapse, Underground	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
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 basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service	$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 performance of professional services.
*6. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure

*7. Property Insurance: For physical damage to the property of Lessee, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
* If applicable	
These insurance types and amounts only may be amended by the City of San Antonio Risk Management Division	

City may request, and without expense to City, to inspect copies of Consultant's policies and endorsements as they apply to the limits and forms required by City.

14.4 Consultant agrees to require, by written contract, that all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide to Consultant a Certificate of Insurance and endorsement that names Consultant and City as additional insureds. Policy limits of the coverages carried by Sub-Consultants and Subcontractors shall be determined as a business decision of Consultant. Consultant shall provide City with said Certificate(s) and endorsement prior to the commencement of any work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Section 14.3.5**. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

14.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all required endorsements. Consultant shall be required to comply with any such requests by City and shall submit all requested documents to City at the address provided below within ten (10) days. Consultant shall pay any costs incurred resulting from the provision of said documents to City.

14.6 Consultant shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes and Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Consultant's policy, City shall submit the received request, along with Consultant's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Consultant's policy information. Consultant and City agree that City shall be bound by the AG

opinion/decision. Similarly, Consultant agrees and accepts City shall provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant's information.

14.6 Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:

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

14.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;

14.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and

14.6.4 Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.

14.6.5 All correspondences sent by Consultant to City, with regard to Consultant's insurance coverages and requests, shall be sent to:

City of San Antonio
Attn: TCI Contract Services
P.O. Box 839966
San Antonio, Texas 78283-3966

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

14.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder until Consultant demonstrates compliance with the requirements hereof.

14.9 Nothing herein contained shall be construed as limiting in any way the extent to which

Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its Sub-Consultants' and/or Subcontractors' performance of the work covered under this Agreement.

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

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

14.12 Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XV
INDEMNIFICATION

15.1 CONSULTANT FULLY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE 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 provisions of this **Article XV** solely are for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

ARTICLE XVI
CLAIMS AND DISPUTES

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

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

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

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

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

16.5.1 No consequential damages shall be allowed; and

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; and

16.5.3 No profit shall be allowed on any damage claim.

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

16.7 Alternative Dispute Resolution.

16.7.1 **Continuation of Services Pending Dispute Resolution.** Each Party is required to

continue to perform its obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable under the circumstances.

16.7.2 **Requirement for Senior Level Negotiations.** Before invoking mediation or any other alternative dispute process set forth herein, the Parties agree that they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days, after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.7.3 Mediation.

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

16.7.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both Parties.

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

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

ARTICLE XVII
SEVERABILITY

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

and the invalidity or unenforceability of any Article, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

ARTICLE XVIII
INTEREST IN CITY CONTRACTS PROHIBITED

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

18.2 Consultant acknowledges that it is informed that the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

18.2.1 a City officer or employee;

18.2.2 a City officer or employee's parent, child or spouse;

18.2.3 a business entity in which City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10)%) or more of the fair market value of the business entity; or

18.2.4 a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

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

ARTICLE XIX
CONFLICTS OF INTEREST DISCLOSURE

Consultant must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so shall constitute a violation of City's Ethics Code. To be "associated" in a business venture or business dealings includes: a) being in a partnership or joint venture with a City officer or employee; b) having a contract with a City officer or employee; c) being joint owners of a business with a City officer or employee; d) owning at least ten percent (10%) of the stock in a corporation in which a City officer or

employee also owns at least ten percent (10%); or e) having an established business relationship with a City Officer or employee as a client or customer.

ARTICLE XX
STANDARD OF CARE/LICENSING

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

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

ARTICLE XXI
RIGHT OF REVIEW AND AUDIT

21.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under this Agreement, during the term of this Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

21.2 City agrees that it shall exercise the right to audit, examine or inspect Consultant’s records only during City’s regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

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

ARTICLE XXII
ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement between City and

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

ARTICLE XXIII
VENUE

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

ARTICLE XXIV
NOTICES

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement shall personally be delivered or mailed to the respective Party by depositing the same in the United States Postal Service, addressed to the applicable address shown below, unless and until either Party otherwise is notified in writing by the other Party of a change of such address. Mailed notices shall be deemed communicated as of five (5) calendar days of mailing.

If intended for City to:	If intended for Consultant, to:
City of San Antonio	_____
TCI	
Attention: Contract Services	_____
114 West Commerce, 9th Floor	
San Antonio, Texas 78205	_____

ARTICLE XXV
INDEPENDENT CONTRACTOR

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

ARTICLE XXVI
CAPTIONS

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

ARTICLE XXVII
ATTORNEY FEES

The Parties hereto expressly agree that neither Party shall be responsible for payment of attorney's fees pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law or any other provision for payment of attorney's fees. Both Parties hereto expressly waive any claim to attorney's fees, should litigation result from any dispute in this Agreement.

ARTICLE XXVIII
CONFLICT RESOLUTION BETWEEN DOCUMENTS

Consultant hereby agrees and acknowledges if anything contained in Consultant's prepared Scope of Services, attached hereto and labeled as **Exhibit 3**, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement and/or with City's General Conditions for City of San Antonio Construction Contracts, attached hereto and labeled as **Exhibit 4**, this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

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

Executed on this _____ day of _____, 20_____.

CITY OF SAN ANTONIO

_____

SHERYL SCULLEY
CITY MANAGER

_____**(FIRM)**

By: _____

_____
Title

APPROVED:

_____
CITY ATTORNEY

EXHIBIT 1

PROJECT FEE SUMMARY
(TO INCLUDE REIMBURSEABLES, IF ANY)
AND TIMELINE FOR DESIGN PHASE SERVICES

EXHIBIT 2

SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN
AND
SBEDA ORDINANACE COMPLIANCE AND PROVISIONS

EXHIBIT 3

SCOPE OF SERVICES

(Shall include the role and responsibilities of Consultant, as detailed in City's General Conditions attached hereto)

Consultant hereby agrees and acknowledges if anything contained in this Consultant prepared Exhibit 3, Consultant's Scope of Services, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts, attached hereto and labeled as Exhibit 4, this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict.

EXHIBIT 4

GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

EXHIBIT 5

ADDENDUM