

**PROFESSIONAL SERVICES AGREEMENT
FOR
ASSISTANCE WITH THE EDWARDS AQUIFER PROTECTION PROGRAM**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager or her designee, and _____ (hereinafter referred to as "Contractor", by and through its President. Both City and Contractor may be referred to collectively hereinafter as "the Parties."

WHEREAS, the citizens of the City approved Proposition 1, commonly known as the Edwards Aquifer Land Protection Program (hereinafter referred to as "the Program"), on May 9, 2015, for the protection of the Edwards Aquifer;

WHEREAS, Contractor is an organization dedicated to protecting and preserving natural resources and shares City's goals of aquifer and water protection in furtherance of its mission for land, water and wildlife preservation;

WHEREAS, Contractor has considerable experience with land conservation strategies, including conservation easements, and desires to contribute this expertise to the Program for maximizing its effectiveness and conservation achievements;

WHEREAS, the Parties desire to collaborate on the Program by entering this cooperative agreement for purposes of furthering their mutual goals for conservation;

NOW, THEREFORE, the Parties hereto agree to the contract provisions detailed below.

I. TERM

1.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement begins at the later of (a) the effective date of the Authorizing Ordinance or (2) the execution by both parties. The term ends at the earlier of (a) expenditure of all Program funds or (b) upon acceptable completion of all tasks described herein.

II. SCOPE OF SERVICES

2.1 Contractor agrees to provide the services described in this Article II and shall receive the compensation described in Article III.

2.2 All work performed by Contractor hereunder shall be performed to the reasonable satisfaction of the Special Project Manager for the Program (hereinafter referred to as "Project Manager"). City shall be under no obligation to pay for any work performed by Contractor that is not reasonably satisfactory to Project Manager.

2.3 Contractor shall, as an independent contractor, to the extent reasonably necessary under the circumstances:

- Work with City's Project Manager and appointed Conservation Advisory Board (hereafter referred to as "CAB") in the in the prioritization of properties for acquisition under the Program;
- Attend monthly CAB meetings and semi-annual planning meetings with the Project Manager;
- Arrange site visits to project areas, coordinating land owner contacts, coordinating and presenting potential acquisitions and providing additional information and assistance to the Project Manager as needed;
- Work with the Project Manager in City's efforts to acquire real property interests in the geographical-priority sections, as specified in the Scientific Evaluation Team (SET) GIS spatial model, and work with the SET to make direct improvements to the GIS spatial model;
- Establish and maintain professional relationships with property owners and initiate negotiations with interested landowners for the purchase of real estate and real estate interests, including conservation easements, entering into options for purchase agreements between landowners and Consultant, and acting as an independent contractor on behalf of City;
- Coordinate and conduct due diligence on identified properties, which may include, but is not limited to, initial landowner outreach, site visits, obtaining title commitments, appraisals, environmental assessments, surveys and easement documentation reports (baseline surveys), in the event conservation easements are to be acquired, and sharing such information with the Project Manager for City's independent review and analysis; and
- Work collaboratively with the City, outside legal counsel and other professionals under this Edwards Aquifer protection program.

2.4 Contractor and City cooperatively will work together in selecting and contracting with outside legal counsel and other professionals for use in this program. Project Manager and Contractor both will have reasonable access to outside legal counsel so selected.

2.5 A Notice of Interest for specific property acquisitions will be issued by City prior to Contractor beginning the due diligence phase of the work, which Notice shall be on a form acceptable to the Parties, and describe the type of property, acquisition (fee simple or conservation easement), timing considerations and direct costs to be reimbursed. Contractor has the sole discretion to determine whether it accepts the Notice of Interest.

2.6 Contractor may assign its option or purchase agreement to City any time prior to closing. In addition, Contractor shall have the discretion, rather than assign its option or purchase agreement, to

proceed to close with a landowner, and in a simultaneous closing between Contractor and City, immediately convey the property to City or other third party agreed upon by City and Contractor. City has the sole discretion and responsibility in determining whether it shall accept such assignment and close with a landowner or accept such conveyance of the property by Contractor in a simultaneous closing, but such decision shall be irrevocable upon approval of the transaction by the San Antonio City Council (hereinafter referred to as “City Council”).

2.7 Contractor will assist City in leveraging Proposition One funding through state, federal or other grant funds, when possible.

III. COST RECOVERY

3.1 As further set forth in this Article III below, City agrees to reimburse Contractor as follows:

- a. **INDIRECT COSTS:** For indirect costs by paying Contractor according to the following table:

<i>Appraisal Amount*</i>	<i>Reimbursement Amount</i>
<\$1,000,000	\$35,000
\$1,000,000 - \$1,999,999	\$40,000
\$2,000,000 - \$2,999,999	\$50,000
\$3,000,000 - \$3,999,999	\$60,000
\$4,000,000 - \$4,999,999	\$65,000
\$5,000,000 - \$7,499,999	\$85,000
\$7,500,000 - \$9,999,999	\$100,000
>\$10,000,000	\$135,000

* If there are multiple appraisals, for purposes of this contract, the Appraisal Amount will be the maximum purchase price approved by the Conservation Advisory Board.

- b. **DIRECT COSTS:** will be approved and designated in the Notice of Interest or as otherwise authorized by the Project Manager and may include earnest money, option fees, appraisals, title insurance, surveys, environmental assessments, easement documentation reports (baseline surveys), legal fees and costs for outside legal counsel and mapping. No additional fees or expenses of Contractor shall be charged by Contractor nor be paid by City, unless authorized by the Project Manager. Legal fees and costs for outside counsel shall not be reimbursed for amounts in excess of \$15,000 per transaction. Contractor shall not incur legal fees chargeable to City, except with written consent from City in the specific instance.

3.2 City's obligation to reimburse direct costs only will arise after City's issuance of a Notice of Interest, and direct costs shall be reimbursed by City within 30 days of City's receipt of an approved invoice for such costs.

3.3 City's obligation to reimburse indirect costs will arise upon City's decision to proceed in accordance with Section 2.6 herein, and City shall make payment of such indirect costs either (i) within

forty-five (45) days after acceptance of an assignment of the option or purchase agreement from Contractor, or (ii) at the time of a simultaneous closing with Contractor and in consideration for Contractor's assignment or conveyance to City. If City Council does not approve a transaction (whether an assignment by Contractor of a particular option or purchase agreement or a conveyance of the property by Contractor in a simultaneous closing), Contractor will not be reimbursed for indirect costs for such transaction.

3.4. City shall not be obligated or liable under this Agreement to any third party, other than Contractor, for the payment of any monies or the provision of any goods or services hereunder, except as approved in a Notice of Interest or as otherwise authorized by Project Manager.

3.5 Notice: Contractor shall deliver all notices hereunder (including invoice for payment) to City as follows:

Project Manager, Edwards Aquifer Protection Program,
Parks and Recreation Department
P.O. Box 839966
San Antonio, TX 78283-3966
Tele. (210) 207-2815
Fax (210)207-7888

The City shall deliver all notices hereunder to Contractor as follows:

IV. OWNERSHIP OF DOCUMENTS

Any and all writings, documents, reports, findings and information collected and/or produced by Contractor and for which City is required to reimburse Contractor under this Agreement (hereinafter collectively referred to as "Property Information"), specifically including the GIS model and its supporting information, shall be the property of City, and City shall have the right to use them without restriction. Contractor may use Property Information in furtherance of its activities under this Program and its conservation efforts involving the Edwards Aquifer, but shall not otherwise use, copy or distribute Property Information without written authorization from Project Manager. This Property Information shall not include any immaterial information or internal correspondence of Contractor, any attorney-client or work-product privileged documents or information of Contractor or any documents or information Contractor is required by law or legal obligation to keep confidential.

V. RECORDS RETENTION

5.1 Contractor and its subcontractors, if any, properly, accurately and completely shall maintain all Property Information and shall make all Property Information available to City at Contractor's office at reasonable times and as reasonably requested during the Agreement period, to include any extension or renewal thereto; and during the Retention Period as defined in Section 5.2

herein, for purposes of audit, inspection, examination, and snaking excerpts or copies of same by City and any of its authorized representatives.

5.2 Contractor shall retain any and all Property Information for a period of three (3) years (hereinafter referred to as "Retention Period") from the date of termination of the Agreement. If, at the end of the Retention Period, Contractor has been notified that there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the Property Information until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such Property Information at reasonable times, as reasonably requested by City, during said Retention Period. City may, at its election and sole cost, require Contractor to provide copies of said Property Information to City prior to, or at the conclusion of, said Retention Period.

5.3 Each party immediately shall notify the other party in the event a party receives a request for information from a third party pertaining to the documentation and records referenced herein. Contractor and City will cooperate in processing and handling all such requests.

VI. TERMINATION

6.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term, as stated in Article I herein, or earlier termination pursuant to any of the provisions of this Agreement.

6.2 Termination Without Cause. This Agreement may be terminated by either City or Contractor upon delivery of written notice thereof to the other party, provided, in such event, City shall be responsible to reimburse Contractor for all direct costs payable hereunder and City shall be obligated to complete all transactions City has agreed to proceed upon, in accordance with Section 2.6 herein, and pay indirect cost reimbursement for such transactions.

6.3 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement automatically shall terminate as of the effective date of such prohibition.

6.4 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as City may designate, at no additional cost to City, of all Property Information, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article V herein. Any Property Information transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such Property Information, if requested.

6.5 Within ninety (90) calendar days of the effective date of completion, termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for monies Contractor claims is owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said ninety (90) calendar days shall negate any liability on the part of City and shall constitute a waiver by Contractor of any and all right or claims to collect moneys to which Contractor may be entitled for services performed pursuant to this Agreement.

6.6 Upon the effective date of completion, expiration or termination of this Agreement, Contractor shall have no obligation to continue any work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

6.7 Termination not sole remedy. In no event shall either party's action of terminating this Agreement be deemed an election of such party's remedies, nor shall such termination limit, in any way, at law or at equity, such party's right to seek damages from or otherwise pursue the other party for any default hereunder or other action.

VII. INSURANCE

7.1 Contractor shall maintain, during the term of this Agreement, liability insurance with limits not less than \$1,000,000.00 for bodily injury to or death of any one person, \$1,000,000.00 for any one occurrence for bodily injury to or death of one or more persons arising out of one occurrence, and \$500,000.00 per occurrence with respect to any property damage. If required by City, a copy of an insurance certificate from Contractor's agent or insurance broker must be submitted to City not later than ten (10) calendar days from the date of such request.

7.2 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' negligence or performance of the work covered under this Agreement.

7.3 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising from Contractor's activities under this Agreement.

VIII. INDEMNIFICATION

8.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.2 The provisions of this INDEMNIFICATION 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.

8.3 CONTRACTOR shall advise CITY in writing within two (2) business days of any claim or demand against CITY or CONTRACTOR known to CONTRACTOR related to or arising out of Contractor's activities under this Agreement.

IX. ASSIGNMENT AND SUBCONTRACTING

9.1 Contractor shall supply qualified personnel as may be necessary to complete the work under this Agreement.

9.2 Before utilizing any subcontractor to perform any part of the work identified in this Agreement, Contractor shall seek written authorization from Project Manager, who shall approve or reject such a request in Project Manager's reasonable discretion, if not provided in the Notice of Interest. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall not be obligated to any third party, including any subcontractor or employee of Contractor, for performance of services or payment of fees unless authorized by Project Manager. Any references in this Agreement to an assignee, transferee or subcontractor indicate only such an entity as has been approved by City.

9.3 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means without the consent of Project Manager. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

9.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate or otherwise dispose of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VI herein, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

X. INDEPENDENT CONTRACTOR; NO AGENCY

Contractor and City acknowledge, covenant and agree that Contractor is an independent contractor with City and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing

herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Contractor under this Agreement and that the Contractor is acting on its own behalf and has no authority to bind the City.

The purpose and intention of this Agreement are to collaborate on the City acquiring fee title or conservation-easement rights in real property through options, purchase contracts, assignments or conveyances. Contractor's role exclusively is of an independent contractor. Provisions in this Agreement for maintenance of insurance, for the benefit of City or Indemnification of City or similar provisions of this Agreement, in no way indicate that Contractor is not an independent contractor.

This Agreement is not intended to restrict Contractor in its conservation efforts. Without limiting the foregoing, Contractor may acquire, sell or otherwise dispose of any property through assignment of options or purchase contracts at its sole discretion, except those properties that become subject to this Agreement. Further, Contractor may continue to work with other persons and entities, such as the Texas Parks and Wildlife Department, the San Antonio Water System, the Edwards Aquifer Authority and other city or county governments, as well as private conservation buyers, with respect to acquiring, selling or transferring property desirable for protecting the Edwards Aquifer system.

XI. CONFLICT OF INTEREST

11.1 Contractor acknowledges that it is informed and understands that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

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

11.2 Pursuant to the subsection 11.1 herein, Contractor warrants and certifies, and acknowledges this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Contractor further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XII. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms of this Agreement shall be effected by amendment in writing and executed by both City and Contractor.

XIII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including, but not limited to, the San Antonio City Charter, San Antonio City Code or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause(s) or provision(s) hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause(s) or provision(s) was/were never contained herein; it also is the intention of the Parties hereto that, in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added, as a part of the Agreement, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XIV. QUALIFICATIONS

Each Party warrants and certifies to the other that it is qualified and has the capabilities to comply with its obligations hereunder.

XV. COMPLIANCE

Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVI. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by Project Manager, as described in Article XII herein. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges or remedies to always be specifically preserved hereby.

XVII. LAW APPLICABLE

17.1 This Agreement shall be construed under and in accordance with the Laws of the State of Texas and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XVIII. LEGAL AUTHORITY

The signer of this Agreement for each Party represents, warrants, assures and guarantees to the other Party that he/she has full legal authority to execute this Agreement on behalf of the respective Party and to bind said Party to all of the terms, conditions, provisions and obligations contained herein.

XIX. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives and successors and assigns, except as otherwise expressly provided for herein.

XX. SECTION HEADING

The section headings contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXI. ADMINISTRATIVE CONSENTS

The Director of Capital Improvements Management Services (hereinafter referred to as "CIMS") and the Assistant Director for Real Estate of CIMS may, without further City Council action, agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and may declare Contractor defaults and pursue remedies for such defaults.

XXII. ENTIRE AGREEMENT

This Agreement, together with its Exhibits, if any, constitute the final and entire Agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless those agreements are in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XII herein.

IN WITNESS WHEREOF, the Parties have caused their representatives to set their hands as of the later of the dates of the signatures below:

City of San Antonio,
a Texas municipal corporation

Entity

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

|
Date: _____

Authorizing Ordinance: _____

Approved As To Form:

City Attorney

DRAFT