

# **PROFESSIONAL SERVICES AGREEMENT**

STATE OF TEXAS  
COUNTY OF BEXAR  
OF SAN ANTONIO

## **SPATIAL PROGRAMMING AND EFFICIENCY STUDY SERVICES**

**FOR THE FROST BANK TOWER**

**(PROJECT NUMBER XX-XXXXXX)**

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

**FIRM NAME**

**FIRM ADDRESS**

(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 Spatial Programming and Efficiency Study, as 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 “Agreement” means this written document signed by City and Consultant, including any other document itemized and expressly referenced in or attached to and expressly made part of this Agreement, to include Consultant’s proposal, to the extent accepted by City and not in conflict with the Articles of this Agreement: Scope / Budget / Reimbursables – **Exhibit A**; Schedule of Project Services - **Exhibit B**; Additional Services - **Exhibit C**; and SBEDA Subcontractor/Supplier Utilization Plan and SBEDA Ordinance Compliance and Provision - **Exhibit D**; General Conditions for City of San Antonio Construction Projects – **Exhibit E**; and issued Addendum – **Exhibit F**.
- 1.2 “Application for Payment” means the electronic filing by the Construction Contractor requesting to be paid for completed Work and materials stored at site.
- 1.3 “Consultant” means **FIRM NAME** and its officers, partners, employees, agents and representatives, and all Sub-Consultants, if any, and all other persons or entities for which Consultant legally is responsible.
- 1.4 “Consultant’s Schedule of Services” means a detailed listing of the services to be performed and the time sequence for the delivery to include an estimated dollar value which shall be attached for the payment of the services over the term of this Agreement.
- 1.5 “CCMS” means the City’s Contract Management System whereby payments made by Consultant to and confirmed by Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and monitored by City for compliance.
- 1.6 “City” and “Owner” mean the City of San Antonio, Texas.
- 1.7 “Claim” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money, and extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between City and Consultant arising out of or relating to this Agreement.
- 1.8 “Compensation” means the amount paid by City to Consultant for completed services accepted by City under this Agreement.
- 1.9 “Director” means the Director of City’s Transportation and Capital Improvements (hereafter referred to as “TCI”) Department, or his/her designated project manager identified in the Project’s issued Notice to Proceed.
- 1.10 “Estimated Cost of Work” means Consultant’s estimate of probable costs.

- 1.11 “Final Compensation” means the final amounts paid by City to Consultant for completed services accepted by City under this Agreement.
- 1.12 “Invoice” means written request for compensation from Consultant to City for services completed under this Agreement.
- 1.13 “Project” means the spatial programming and efficiency study.
- 1.14 “Proposal” means the proposal of Services submitted by Consultant in response to City’s Request for Qualifications.
- 1.15 “SAMSA” means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, collectively comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.
- 1.16 “Services” means the services performed by Consultant, as required by and stated in **Article III** and **Article IV** of this Agreement.
- 1.17 “Total Compensation” means the not to exceed amount of this Agreement.

## **ARTICLE II. CONSULTANT’S RESPONSIBILITIES**

2.1 Consultant shall hold periodic conferences with Director or his/her representatives through the end of the Project so Consultant has the full benefit of City’s experience and knowledge of existing needs and facilities, and so the Project is 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 its possession relative to existing facilities and to this particular Project, at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant upon termination or completion of the Project or if instructed to do so by the Director.

2.2 Consultant warrants 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 in Bexar County, Texas.

2.3 Unless otherwise required by City, Consultant shall apply for and assist City in obtaining building permits from all governmental authorities having jurisdiction over the Project and 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 this Agreement, and shall appear on behalf of City at up to three meetings with governmental entities, 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.

2.4 Consultant warrants 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 it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of Article XII herein.

### **ARTICLE III. BASIC SERVICES**

3.1 Consultant shall not commence performance of any Services on this Project until being thoroughly briefed on the scope of the Project and being notified by City in writing to proceed. The scope of the Project and Consultants Services required shall be dependent on Consultant's review of City's criteria and the development of a Proposal by Consultant to define the Services based on this Agreement and a complete understanding of the goals and milestones of City for this Project. Should the goals of the Project subsequently change, either Consultant or City may request a review of the anticipated Services, along with an appropriate adjustment in compensation.

3.2 Consultant shall review laws, codes and regulations applicable to Consultant's services. Consultant shall be responsible for registering the Project with the Department of Licensing & Regulation, Architectural Barriers, and obtaining all reviews, inspections necessary to comply with all state and federal handicapped and Americans with Disabilities Act (hereafter referred to as "ADA") requirements. Consultant also shall be responsible for ensuring all facilities are in accordance and comply with all state and federal handicapped and ADA requirements.

3.3 Consultant shall render the professional services described in this **Article III** necessary for the development of the Project to Substantial Completion, any special milestones as acceptable to the Director and subject to other provisions of this Agreement. Any service(s) customarily required by law or by common due diligent practice shall presumed to be included in Consultant's Scope of Services. The General Conditions for City's Construction Contracts have been attached hereto, labeled as **Exhibit "E"** and made a part of this Agreement. Consultant hereby acknowledges and accepts its responsibilities, as defined therein and applicable, under City's General Conditions.

3.4 Consultant shall coordinate its services with those services provided by City and City's Architects. Consultant shall be entitled to rely on the completeness of services and information furnished by City and City's Architects.

3.5 Consultant shall manage Consultant's services, consult with City, research applicable criteria, attend Project meetings, communicate with members of the Project team and report progress to City. Additionally, Consultant shall attend all public hearings, presentations, City Council meetings or other official or public meeting concerning the Project, as requested by City. All Project meetings and a total of three (3) public hearings, presentations, council meetings or other official or public meetings shall be included in basic service. Any additional public

hearings, presentations, City Council meetings or other official or public meeting shall be considered Additional Services as described in **Article IV** herein.

#### **ARTICLE IV. ADDITIONAL SERVICES**

Additional Services are not included in Basic Services but may be required for the delivery of the Project. All Additional Services, to include the cost thereof, shall be listed in **Exhibit C** hereto, and if such Additional Services are to be performed by Subcontractors or Sub-Consultants, then Consultant shall list such subcontractors or Sub-Consultants, to include the legal names, addresses and telephone numbers. The cost of all Additional Services shall be included in the not-to-exceed Total Compensation for this Contract.

#### **ARTICLE V. FURTHER SERVICES REQUIRING AMENDMENT**

5.1 If, during the performance of the Project, further services are required of Consultant, Consultant shall notify City, in a timely manner, to explain the reasons for the further services. Any further services shall be negotiated, agreed upon and added to this Agreement by a written amendment executed by both parties hereto.

5.2 Further services may be provided after the execution of this Agreement without nullifying the Agreement. If further services are required, as a result of City's decision to change the scope or redirect the goals after drawings have been completed, and Consultant shall be charging City for these additional services, Consultant shall agree to work on the agreed-upon fully-loaded hourly basis per task, established in the negotiation of this Agreement, to complete the services. If City elects to add scope and increase the services to be provided by Consultant, there shall be a written agreement between both City and Consultant to change the scope and a written agreement reached for additional fees, based upon hours necessary, if any. If additional compensation is negotiated for these requested increased services, compensation shall be added to the Final Compensation and paid to Consultant after a written amendment incorporating such services into the Agreement has been executed by both parties. Any further services which Consultant negotiates to charge City shall be provided in accordance with the labor rates set out in **Exhibit A** hereto on a not-to-exceed basis and set out in a written amendment approving such services.

#### **ARTICLE VI. ESTIMATED COST OF WORK**

6.1 The Estimated Cost of Work shall be the total estimated cost for the Project for all elements of the Project, specified by Consultant, and must include and incorporate City's General Conditions, overhead and profit, but not the Cost for Design, land or City's equipment.

6.2 City's budget for the Estimated Cost of Work is provided in this Agreement and may be adjusted throughout the Project, as agreed upon by City. It is the responsibility of Consultant to professionally evaluate City's budget and recommend scope changes which may be required to meet City's budget.

6.4 Consultant shall be permitted to include in the Estimated Cost of Work contingencies for price escalation early in the Project and identify elements and systems which shall deliver the Project within City's budget. If, at the end of each phase of Work, Consultant's Estimated Cost of Work is higher than City's budget, Consultant shall, at its own cost, revise the documents to bring them into budget, unless a written agreement from City approves a budget change.

## **ARTICLE VII. TIME AND PERIOD OF SERVICE**

7.1 Prior to commencement of any Services, Consultant shall provide City with:

- (1) Service Fees and Reimbursables, listed in Consultant's Scope and Budget on **Exhibit A** hereto, which shall list labor categories and associated fully-loaded hourly rates and reimbursable cost and expenses required for completion of the Services; and
- (2) a Schedule of Project Services, listed in **Exhibit B** hereto, which shall detail the various service phases, as described in **Article III** and **Article IV** herein, with the expected time frame for delivery and shall delineate all services to be performed during each phase, the total estimated time and labor by Consultant and all Subcontractors required for the completion of each phase and the Additional Services and Reimbursables, if any, for each phase.

7.2 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the Services stated in **Article III "Scope of Basic Service"** and **Article IV "Additional Services"** of this Agreement in a prompt and continuous manner. If, upon review of any phase of Services, City determines corrections, modifications, alterations or additions are required by Consultant, Consultant shall complete these corrections, modifications, alterations or additions before that Phase of Services is approved by City.

7.3 Consultant shall not proceed with the next appropriate Phase of Services without written authorization from City. City may, at any time, elect to discontinue Consultant's Services for any reason. However, if circumstance dictates, City may make adjustments to the scope of Consultant's obligations at any time to achieve the required design.

7.4 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 ten (10) calendar days from the occurrence of any event, for which time for performance by Consultant shall significantly be 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 Consultant is responsible for the need for extended time City shall have the right to make a Claim, as provided in this Agreement.

**ARTICLE VIII  
INSURANCE REQUIREMENTS**

8.1 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 “**SPATIAL PROGRAMMING AND EFFICIENCY STUDY FOR THE FROST BANK TOWER**” **Project** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent, accompanied by an affidavit also signed by Consultant, attesting 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 phone 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. No officer or employee, other than City’s Risk Manager, shall have authority to waive this requirement.

8.2 City reserves the right to review the insurance requirements of this **Article IX** 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.

8.3 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:

<u>TYPE</u>	<u>AMOUNTS</u>
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	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

* d. Environmental Impairment/Impact – sufficiently broad to cover disposal liability *e. Explosion, Collapse, Underground	
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 not less than two (2) 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	
<b>These insurance types and amounts only may be amended by the City of San Antonio Risk Management Division</b>	

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.

8.4 Consultant agrees to require, by written contract, 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 naming 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 and endorsement prior to the commencement

of any work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Section 9.3.5**. 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.

8.5 As they apply to the limits required by City, if City requests a copy/copies of an insurance policy, declaration page and all required endorsements, City shall be entitled, without expense, to receive copies of the policies, declaration page and all endorsements. Consultant shall pay all costs incurred as a result of the provision of said documents to City.

8.6 Consultant shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy 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 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.

8.7 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:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, 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;
- Provide for an endorsement 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and
- Where allowed by respective policy provisions, terms and conditions, provide advance written notice to City of any suspension or non-renewal in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.
- All correspondences regarding Consultant's Insurance requirements shall be sent to:

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

8.8 Within five (5) calendar days of notice to Consultant of a 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.

8.9 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.

8.10 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.

8.11 It is agreed 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.

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

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

## **ARTICLE IX. CITY'S RESPONSIBILITIES**

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

9.2 City shall give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in Consultant's Services or any development which affects the scope or timing of Consultant's Services.

9.3 City reserves the right to contract directly for the services of the geotechnical engineers,

surveyors, material testing and special testing of materials, as required by the code and Contract Documents. In some instances, however, City may request these listed services to be managed by Consultant as an Additional Services. In most instances, Environmental and hazardous waste testing shall be contracted by City.

## **ARTICLE X. COMPENSATION**

10.1 The Total Compensation for all services defined by this Agreement, to include Basic Services, Additional Services and Reimbursables, is the not-to-exceed sum of **XXXXXX AND NO/100 DOLLARS (\$XXX,XXX.00)**. It is agreed and understood such amount shall constitute full compensation to Consultant for all Basic Services, Additional Services and Reimbursables listed on Consultant's Scope of Services on **Exhibit A** hereto, and shall meet all requirements of City. Such amount has been approved and appropriated by the San Antonio City Council for expenditure under this Agreement. Unless and until City further makes appropriations for any additional services not included in the Scope Services, Additional Services and Reimbursables of this Agreement, the obligation of City to Consultant for Total Compensation in connection with this Agreement cannot and shall not exceed such sum of **XXX AND NO/100 DOLLARS (\$XXX,XXX.00)** without further amendment to this Agreement.

10.2 Consultant's Schedule of Project Services, as found in **Exhibit B** hereto, shall be used as the basis for reviewing Consultant's Invoices. The Schedule shall include all services to be performed for the Project and also shall include Additional Services and Reimbursable which make up the Total Compensation.

10.2.1 Before the first Invoice, City shall receive from Consultant a Schedule of Project Services, reflecting the fully-loaded hourly rates and projected actual hours required for each task, along with the expected time frame for delivery based on the Design Phases, as described in **Article III** and **Article IV** herein, prepared in such form and supported by such data to substantiate its accuracy as City may require. This Consultant's Schedule of Project Services shall be used as the basis for reviewing Consultant's Invoice during each phase of the Services.

10.2.2. Consultant and City acknowledge the total not-to-exceed Compensation amount contained in **Section 10.1** herein has been established predicated upon the not-to-exceed costs of all Services to be rendered under this Agreement.

10.2.3 All Invoices shall be submitted electronically through City's Program Management Portal (hereafter referred to as "PRIMELink"), as defined in **Section 10.11** herein. Any changes with Consultant's Schedule, once approved, shall be processed and approved as task orders through PRIMELink.

10.3 Consultant warrants title to all Services covered by its Invoices shall pass to City no later than the time of Compensation. Consultant further warrants, upon submittal of an Invoice, all Services for which Invoices previously have been issued and compensation 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 the Work. 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 compensation paid by City to Consultant.

10.4 Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants or vendors in connection with the Project and shall provide City with evidence of such payment through City's electronic City of San Antonio Contract Management System (hereafter referred to as "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(s) or vendors for their services or products. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on Sub-Consultants and vendors as are applicable to Consultant hereunder, and require Sub-Consultants to provide confirmation to City of receipt of payments through CCMS and, if City so requests, shall provide copies of such payments by the Sub-Consultants and/or vendors.

10.5 The final compensation to be made by City to Consultant shall be payable upon submission of a statement of release, with the final Invoice notifying City there is no further compensation owed to Consultant by City beyond the final Invoice.

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

10.6.1 Delays in the performance of Consultant's Services;

10.6.2 Third party Claims filed or reasonable evidence indicating a probable filing of such Claims, unless security acceptable to City is provided by Consultant;

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

10.6.4 Reasonable evidence Consultant's Services cannot be completed for the amount unpaid under this Agreement.

10.6.5 Damage to City or Construction Contractor; and/or

10.6.6 Persistent failure by Consultant to carry out the performance of its Services in accordance with this Agreement.

10.7 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 XI**.

10.8 In the event of any dispute between the parties regarding the amount of compensation for any phase or as final Compensation, or regarding any amount 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 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 herein, as cited in **Paragraph 14.2** herein, any such Claim shall be deemed to have been waived.

10.9 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. 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.

10.10 **Reimbursable Expenses.** City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses that have not been agreed to and accepted in writing by City prior to the execution of this Agreement. If Consultant, Sub-Consultant or vendor of Consultant should make an expenditure which, prior to its occurrence, had not been approved in writing by City, either prior to or after the execution of this Agreement, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

10.10.1 Travel outside SAMSA shall be reimbursable only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under this 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 shall not exceed the amount noted in attached **Exhibit A** Scope/Budget/Reimbursables without further approval of City. City shall not pay for Consultant's travel within SAMSA.

10.10.2 Mailing, courier services and copies of documents requested in writing by City in excess of the copies which are to be provided under the Agreement. These costs shall not exceed the amount noted in attached Scope/Budget/Reimbursables without further approval of City.

10.10.3 Graphics, physical models and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope/Budget without further approval of City.

10.10.4 City shall not allow a markup on any of the above reimbursable items and only shall reimburse actual costs incurred with City's written approval.

10.11 **Internet-based Project Management Systems.** City shall administer its services through

an Internet-Based Project Management System (“PRIMELink”). In such case, Consultant shall conduct communication through PRIMELink and perform all Project-related functions utilizing this system, with the exception of Sub-Consultant payment monitoring activities through CCMS. This includes correspondence, submittals, requests for information, vouchers, invoices or payment requests and processing, amendments, change orders and other administrative activities. City shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

## **ARTICLE XI. OWNERSHIP OF DOCUMENTS**

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

11.2 Consultant acknowledges and agrees, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Project and Agreement and shall be used as City desires. All documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City upon request or termination or completion of this Agreement without restriction on future use. However, any reuse of documents on a different Project, without specific written verification or adaptation by Consultant, shall be at City’s sole risk and without liability or legal exposure to Consultant.

11.3 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 written consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City.

11.4 CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS AGREEMENT TO CITY, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY PRIOR-OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND 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 MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

11.5 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 or other Consultants and/or engineers and/or other persons, subsequent to the completion of the Project. Consultant shall note Consultant's agreement or disagreement with all changes or modifications on all drawings, specifications and other documents by other Consultants and/or engineers or other persons outside of Consultant's control, including electronic copies, prior to the completion of the Project.

11.6 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 which are sealed and signed by Consultant. Files in editable electronic media format of text, data, graphics or other types, (such as .DWG and the REVIT MODEL) which are furnished by Consultant to City only are for convenience of City or a utility. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. However, 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.

11.7 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 and/or its suppliers.

## **ARTICLE XII. TERMINATION AND/OR SUSPENSION OF WORK**

12.1 Right of Either Party to Terminate for Default.

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

12.1.2 The Party not in default must issue a signed, written Notice of Termination, citing this Section 12.1.2, 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 such 10-day calendar period, commencing upon receipt of notice of termination, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

12.2 City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a written and signed Notice of Termination, citing this Section 12.2, which shall take effect on the twentieth (20<sup>th</sup>) calendar day following receipt of said Notice and upon the scheduled completion date of the performance phase in which Consultant then currently is working, whichever effective termination date occurs first.

12.3 City reserves the right to suspend this Agreement for the convenience of City by issuing a written and signed Notice of Suspension, citing this Section 12.3, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way guarantee the total number of calendar days of suspension which may occur. Such suspension shall take effect immediately upon Consultant's receipt of said Notice of Suspension.

12.4 Consultant hereby is given the right to terminate this Agreement in the event a suspension extends for a period in excess of one hundred and twenty (120) consecutive calendar days. Consultant may exercise its right to terminate by issuing a written and signed Notice of Termination, citing this Section 12.4, to City after the expiration of one hundred and twenty (120) consecutive calendar days from the effective date of the suspension. Termination, as defined under this Section 12.4, shall become effective immediately upon City's receipt of said written and signed Notice of Termination from Consultant.

12.5 The procedures which Consultant shall follow, upon Receipt of Notice of Termination, are:

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

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

12.5.3 Upon the above conditions being met, City promptly shall compensate 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 previously paid Compensation.

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

12.6 The procedures Consultant is to follow, upon Receipt of Notice of Suspension, are:

12.6.1 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.

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

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

12.6.4 In the event Consultant elects to exercises its 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.

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

12.6.6 Upon the above conditions being met, City promptly shall compensate 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 previously paid Compensation.

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

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

### **ARTICLE XIII. INDEMNIFICATION**

**13.1 CONSULTANT FULLY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER REFERRED TO AS "INDEMNITEE" OR "INDEMNITEES" FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEE 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.**

13.2 The provisions of this **Article XIII** 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 XIV. CLAIMS AND DISPUTES**

14.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, and/or an extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims must be initiated by written notice to the other Party. Every

Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his/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.

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

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

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

**14.5 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 to Claims by either Consultant or City:

14.5.1 No consequential damages shall be allowed;

14.5.2 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

14.5.3 No profit shall be allowed on any damage Claim by Consultant.

**14.6 No Waiver of Governmental Immunity.** Nothing in this Section **XIV** shall be construed to waive City's Governmental Immunity from a lawsuit. Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.

**14.7 Alternative Dispute Resolution**

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

**14.7.2 Requirement for Senior Level Negotiations.** Before invoking mediation or any

other alternative dispute process set forth herein, the Parties hereto agree they first shall try to resolve a dispute arising out of or related to this Agreement through discussions directly between senior management representatives within their respective organizations who have overall managerial responsibility for this or similar Projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute, then the Parties shall proceed with mediation alternative dispute resolution process contained herein.

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

#### 14.8 Mediation.

14.8.1 In the event City or Consultant shall contend 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.

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

14.8.3 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 XV** shall be deemed to have occurred.

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

### **ARTICLE XV. NON-DISCRIMINATION POLICY**

**15.1 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 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 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 it understands and agrees 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 15.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with this *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.

**15.2 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 the San Antonio Internet-Bases Project Management System. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any Sub-Consultants from this Project.

## **ARTICLE XVI. ASSIGNMENT OR TRANSFER OF INTEREST**

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

## **ARTICLE XVII. SEVERABILITY**

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

## **ARTICLE XVIII**

## **INTEREST IN CITY CONTRACTS PROHIBITED**

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

18.2 Consultant acknowledges it is informed the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: (1) a City officer or employee; his parent, child or spouse; (2) a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; and/or (3) a business entity in which any individual or entity above listed is a Sub-Consultant on a City contract, a partner or a parent or subsidiary business entity.

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

## **ARTICLE XIX. CONFLICTS OF INTEREST DISCLOSURE**

Consultant shall disclose if it is associated in any manner with a City Official or employee in a business venture or business dealings. Failure to do so shall constitute a violation of City's Ethics Code. To be "associated" in a business venture or business dealings includes:

- (1) being in a partnership or joint venture with the officer or employee;
- (2) having a contract with the officer or employee;
- (3) being joint owners of a business; or
- (4) owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%), or having an established business relationship as client or customer.

## **ARTICLE XX.**

## **RIGHT OF REVIEW AND AUDIT**

20.1 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 during the 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 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. "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 any issue in question, and any and all other agreements, sources of information and matters which may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

20.2 City agrees it shall exercise the right to audit, examine or inspect only during regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, 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.

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

## **ARTICLE XXI. 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 only may be amended by written instrument signed by both City and Consultant.

## **ARTICLE XXII. VENUE**

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

## **ARTICLE XXIII.**

**NOTICES**

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

If intended for City, to:

If intended for Consultant, to:

Transportation and Capital  
Improvements Department

**CONSULTANT'S NAME**

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

**CONSULTANT'S ADDRESS**

With a copy to:

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

**ARTICLE XXIV.  
INDEPENDENT CONTRACTOR**

In performing services under this Agreement, the relationship between City and Consultant is that of 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 workflow and determining how the Services are 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/or Worker's compensation, which City provides to or for its employees.

**ARTICLE XXV  
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 XXVI**

**ATTORNEY FEES**

The Parties expressly agree, in the event of litigation, both parties waive rights to payment of attorneys' fees that otherwise might be recoverable pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

**ARTICLE XXVII  
CONFLICT RESOLUTION BETWEEN DOCUMENTS**

Consultant hereby agrees and acknowledges if anything contained in Consultant's prepared Scope/Budget/Reimburseables, attached hereto and labeled as **Exhibit A**, 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 E**, 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 \_\_\_\_\_ (TITLE) does now sign, execute and deliver this document.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

CITY OF SAN ANTONIO

\_\_\_\_\_  
**FIRM NAME**

\_\_\_\_\_  
**FIRM REPRESENTATIVE'S NAME**

\_\_\_\_\_  
PETER ZANONI  
ASSISTANT CITY MANAGER

\_\_\_\_\_  
**TITLE**

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT A**

**SCOPE / BUDGET / REIMBURSEABLES**

**See Attached Proposal Dated \_\_\_\_\_**

**Consultant hereby agrees and acknowledges if anything contained in this Consultant prepared Exhibit A, CONSULTANT'S SCOPE/BUDGET/REIMBURSEABLES, 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 E, 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 B**  
**SCHEDULE OF PROJECT SERVICES**

**EXHIBIT C**

**ADDITIONAL SERVICES**

**See Attached Proposal Dated \_\_\_\_\_**

**EXHIBIT D**

**SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN  
AND  
SBEDA ORDINANCE COMPLIANCE AND PROVISION**

**EXHIBIT E**  
**GENERAL CONDITIONS**  
**FOR**  
**CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS**

**\*If applicable**

**EXHIBIT F**  
**ADDENDUM**