

AN ORDINANCE **2010-04-08-0306**

**AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT IN AN AMOUNT NOT TO EXCEED \$625,000.00 WITH POPULOUS, INC. TO CONDUCT A FACILITIES DEVELOPMENT STUDY OF THE HENRY B. GONZALEZ CONVENTION CENTER; APPROPRIATING FUNDS FROM THE HOT TAX CAPITAL FACILITIES FUND.**

\* \* \* \* \*

**WHEREAS**, the City issued a Request for Qualifications (“RFQ”) for a facilities development study of the Henry B. Gonzalez Convention Center in October 2009; and

**WHEREAS**, Populous, Inc. (“Populous”) submitted a response to the RFQ which was evaluated by an evaluation committee comprised of City staff and local stakeholders based upon the stated criteria of: (1) Experience, Qualifications and Background; (2) Proposed Plans; and (3) Compliance with the City’s Small, Minority Business Program; and

**WHEREAS**, after review of Populous’ proposal and an interview by the evaluation committee, Populous was selected to negotiate the terms and conditions of a professional service agreement to provide facilities development study; and

**WHEREAS**, such terms and conditions have been agreed upon including a scope of services and reporting requirements; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The terms and conditions of a Professional Service Agreement to provide a facilities development study of the Henry B. Gonzalez Convention Center are hereby approved. A copy of the Agreement in substantially final form is attached to this Ordinance as **Exhibit A**. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

**SECTION 2.** The City Manager or her designee is hereby authorized for a period of sixty (60) days to execute this Professional Service Agreement in accordance with Section 1 above.

**SECTION 3.** The amount of \$625,000.00 is appropriated for this Ordinance in Fund 29023000, Cost Center 0707040001, General Ledger 5201040 and the Fiscal Year 2010 budget is amended to reflect this change.

**SECTION 4.** Payment not to exceed the budgeted amount is authorized to Populous, Inc. and should be encumbered with a purchase order.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

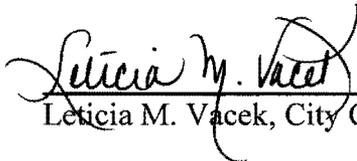
**SECTION 6.** This Ordinance shall become effective on and after the tenth (10<sup>th</sup>) day after passage hereof.

PASSED AND APPROVED this 8<sup>th</sup> day of APRIL 2010.



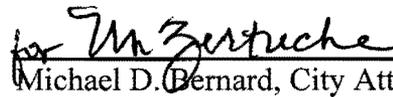
M A Y O R  
Julián Castro

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Michael D. Bernard, City Attorney

<b>Agenda Item:</b>	23 ( in consent vote: 5, 6A, 7, 10, 11, 12, 13A, 13C, 13D, 13E, 14, 16, 20A, 20B, 20D, 22, 23, 24, 25, 28, 29 )						
<b>Date:</b>	04/08/2010						
<b>Time:</b>	10:23:20 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a professional services agreement with Populous, Inc. in an amount up to \$625,000.00 to conduct a facilities development study of the Henry B. Gonzalez Convention Center; and appropriating funds from the HOT Tax Capital Facilities Fund. [Penny Postoak Ferguson, Assistant City Manager; Michael J. Sawaya, Director, Convention, Sports & Entertainment Facilities]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3	x				x	
Leticia Cantu	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

**PROFESSIONAL SERVICES AGREEMENT  
ARCHITECTURAL/ENGINEERING SERVICES**

**CONVENTION CENTER FACILITIES DEVELOPMENT STUDY**

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

POPULOUS, INC  
300 WYANDOTTE, SUITE 200  
KANSAS CITY, MO 64105

hereinafter termed "Design Consultant", said Agreement being executed by the CITY pursuant to City Ordinance 2010-04-08-~~0306~~ and by the Design Consultant for services hereinafter set forth in connection with the Henry B. Gonzalez Convention Center Facilities Development Study hereinafter termed the "Project" for the City of San Antonio.

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**ARTICLE I.  
DEFINITIONS**

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

- 1.1 "Application for Compensation" means written form for a request from DESIGN CONSULTANT or Construction Contractor to be paid for completed work.
- 1.2
- 1.3
- 1.4 "CITY" means the City of San Antonio, Texas.
- 1.5 "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, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the City and DESIGN CONSULTANT arising out of or relating to the Agreement.
- 1.6 "Compensation" means amounts paid by City to DESIGN CONSULTANT for completed services under this Agreement.
- 1.7 "CONSTRUCTION CONTRACTOR" means the firm hired by the CITY to construct the Project.
- 1.8 "Construction Contract Documents" means the contract between the CITY and the firm contracted by CITY to construct the project and all documents therein.
- 1.9 "Contract Drawings and Specifications" means the construction documents.
- 1.10 "DESIGN CONSULTANT" means POPULOUS, INC. and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, and all other persons or entities for which the DESIGN CONSULTANT is legally responsible.
- 1.11 "Director" means the Director of CITY's Convention, Sports and Entertainment Facilities Department, or the designated responsible department identified by the Notice to Proceed.
- 1.12 "Final Compensation" means the final amounts paid by CITY to DESIGN CONSULTANT for completed services under this Agreement.
- 1.13 "Final Payment" means the final amounts paid by CITY to CONSTRUCTION CONTRACTOR for completed work under the construction contract.
- 1.14 "City Designated Representative (CDR)" means person designated by City to act for City.
- 1.15 "Project" means the the Henry B. Gonzalez Convention Center Facilites Development Study undertaken by CITY for which DESIGN CONSULTANT's services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.
- 1.16 "Payment" means amounts paid by City to Construction Contractor for work performed under construction contract documents.
- 1.17 "Proposal" means DESIGN CONSULTANT's Proposal to provide services for this Project.

- 1.18 "Request for Payment" means a form the Construction Contractor uses to be paid for completed work.
- 1.19 "Schedule of Values" means the values allocated to materials and various portions of the work, prepared in such form, and supported by such data to substantiate its accuracy as City may require.
- 1.20 "Scope of Services" mean the services described in Article IV Scope of Services, including any exhibits or attachments referenced therein.
- 1.21 "Services" means all services performed by the DESIGN CONSULTANT under the Scope of Work.
- 1.22 "Statement of Probable Construction Cost" means DESIGN CONSULTANT's estimate of probable Construction costs based on current, area, volume or other unit costs.
- 1.23 "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use.
- 1.24 "Total Compensation" means the total amount of this Agreement.
- 1.25 "Work" means the construction performed by the Construction Contractor and design services performed by the DESIGN CONSULTANT.

## **ARTICLE II. COMPENSATION**

- 2.1 Compensation for services defined by this Agreement is **FIVE HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED SEVENTY DOLLARS AND NO CENTS (\$554,970.00)**. It is agreed and understood that Compensation to the DESIGN CONSULTANT shall not exceed this amount without written approval by City and direction to proceed with any activity that would increase the Compensation.
  - 2.1.1 City has made available an additional amount of FIFTY SEVEN THOUSAND SEVENTY-FIVE DOLLARS AND 0 CENTS (\$57,075.00) for DESIGN CONSULTANT'S Reimbursable Expenses associated with this Agreement.
  - 2.1.2 Total Compensation for this Agreement shall in no case exceed the amount of SIX HUNDRED TWELVE THOUSAND FORTY-FIVE DOLLARS AND 0 CENTS (\$612,045.00).
- 2.2 A Schedule of Values shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Payment. The Schedule of Values shall include a schedule to complete the Project in accordance with the Scope of Work in three phases as set forth below.
  - 2.2.1 The Schedule of Values set forth below shall be used as the basis for reviewing the DESIGN CONSULTANT's Applications for Payment during each phase of the Work.
  - 2.2.2 DESIGN CONSULTANT shall complete the PROJECT in accordance with the following Project Design Phases:

<u>Phase</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
1 - Up-Dated Expansion Feasibility Study and Market / Financial Analysis	\$37,850	\$ 5,600	\$43,450
2 - Facility Condition Assessment	\$140,870	\$10,875	\$151,745
3(a) - Strategic Upgrade and Renovation Plan	\$361,450	\$35,800	\$397,250
3(b) - Service and Revenue Enhancement Plan	\$14,800	\$4,800	\$19,600
<b>Total</b>	<b>\$554,970</b>	<b>\$57,075</b>	<b>\$612,045</b>

- 2.3 The DESIGN CONSULTANT shall submit an itemized Application for Compensation for work completed in accordance with the Schedule of Values. Such Application for Payment shall be notarized, if required, and supported by such data substantiating the DESIGN CONSULTANT's right to Compensation as the City may require. Such Application for Payment shall be used to substantiate the DESIGN CONSULTANT's right to compensation from the City.
- 2.3.1 Such applications may include Applications for Compensation on account of changes in the Work which have been properly authorized by the Director, or by interim determination approved by the Director, but not yet included in Amendments to this Agreement.
- 2.3.2 The DESIGN CONSULTANT and the CITY acknowledge the fact that the Total Fee amount contained in paragraph 2.1 above has been established predicated upon the total estimated costs of services to be rendered under this Agreement. For additional services or if the scope of services is changed materially, compensation shall be in accordance with EXHIBIT 2 "Compensation for Additional Professional Services."
- 2.3.3 The DESIGN CONSULTANT shall, within ten (10) days following receipt of Compensation from the City, pay all bills for services performed and furnished by others in connection with the Project and the performance of the work, and shall, if requested, provide the City with evidence of such payment. DESIGN CONSULTANT's failure to make payments within such time shall constitute a material breach of this Agreement, unless the DESIGN CONSULTANT is able to demonstrate to City bona fide disputes associated with the unpaid subconsultant and its work. DESIGN CONSULTANT shall include a provision in each of its subagreements imposing the same payment obligations on the subconsultant's as are applicable to the DESIGN CONSULTANT hereunder, and if the City so requests, shall provide copies of such payments by the DESIGN CONSULTANT to the City. If the DESIGN CONSULTANT has failed to make payment promptly to the subconsultant for the Work for which the City has made payment to the DESIGN CONSULTANT, the City shall be entitled to withhold payment to the DESIGN CONSULTANT to the extent necessary to protect the City.
- 2.3.4 The DESIGN CONSULTANT agrees that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The DESIGN CONSULTANT further agrees that upon submittal of an Application for Compensation, all Work for which Applications for Application have been previously issued and payments received from the City shall, to the best of the DESIGN CONSULTANT's knowledge, information and belief be free and clear of liens, claims, security interests or encumbrance in favor of the DESIGN CONSULTANT, or other persons or entities making a claim by reason of having provided labor or services relating to the Work. **DESIGN CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY,**

**THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY THE CITY TO DESIGN CONSULTANT.**

**ARTICLE III.  
METHOD OF PAYMENT**

- 3.1 DESIGN CONSULTANT may submit a request for Partial Compensation prior to submittal of a Request for Compensation in this Article. A request for Partial Compensation must be accompanied by a progress report detailing the Work performed. Any partial payment made shall be in proportion to the Work performed as reflected in the progress report and approved by the Director. Partial Compensation shall not exceed seventy percent (70%) of the compensation allowed for the Phase in which the Partial Compensation is requested. The balance due for the Phase in which Partial Compensation is approved will be paid to DESIGN CONSULTANT upon approval and acceptance of the Phase.
- 3.2 Compensation may be made to the DESIGN CONSULTANT based upon the several phases as described in Article II and in accordance with and subject to the following:
- 3.2.1 Phase 1 – Up-dated Expansion Feasibility Study & Market / Financial Analysis – 100% of the total amount due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY.
- 3.2.2 Phase 2 – Facility Condition Assessment 100% of the total amount due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the CITY.
- 3.2.3 Phase 3(a) – Strategic Upgrade and Renovation Plan– 100% of the total amount due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the City.
- 3.2.4 Phase 3(b) – Service and Revenue Enhancement Plan - 100% of the total amount due the DESIGN CONSULTANT under this Phase shall be payable after approval and acceptance of this Phase by the City.
- 3.2.5 Project Close Out and Final Payment:
- a. The DESIGN CONSULTANT shall not be entitled to final payment unless and until it submits to the City its affidavit that the invoices for services, and other liabilities connected with the Work for which the City, or the City's property, might be responsible have been fully paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all the DESIGN CONSULTANT's subconsultants and of any and all other parties required by the City that are either unconditional or conditional on receipt of final payment, Certificates of insurance showing continuation of required insurance coverages; such other documents as City may request.
- b. Final Payment - DESIGN CONSULTANT agrees to submit a statement of release with the final billing notifying the CITY that there are no further payments owed to the DESIGN CONSULTANT by the CITY beyond the final bill, Final billing shall indicate "Final Bill - no additional payments are due to DESIGN CONSULTANT".
- 3.2.6 The City may withhold payment to such extent as may be necessary, in the City's opinion, to protect the City from damage or loss for which the DESIGN CONSULTANT is responsible, because of:
- 3.2.6.1 delays in the performance of the DESIGN CONSULTANT's work;

- 3.2.6.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the DESIGN CONSULTANT;
  - 3.2.6.3 failure of the DESIGN CONSULTANT to make payments properly to sub-consultants or vendors for labor, materials or equipment;
  - 3.2.6.4 reasonable evidence that the DESIGN CONSULTANT's work cannot be completed for the amount unpaid under this Agreement;
  - 3.2.6.5 persistent failure by the DESIGN CONSULTANT to carry out the performance of its services in accordance with this Agreement.
- 3.2.8 When the above reasons for withholding are removed or remedied by the DESIGN CONSULTANT, payment of the amount withheld will be made within a reasonable time. The City shall not be deemed in default by reason of withholding payment as provided for in this Article.
- 3.2.9 In the event of any dispute(s) between the parties regarding the amount properly payable for any Phase or as final payment, or regarding any amount that may be withheld by the City, the DESIGN CONSULTANT shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event DESIGN CONSULTANT does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- 3.2.10 The City shall make final payment or all sums due the DESIGN CONSULTANT not more than thirty (30) days after the DESIGN CONSULTANT has submitted the final Basic Services Pay Estimate and all Additional Services Pay Estimates.
- 3.2.11 Acceptance of final payment by the DESIGN CONSULTANT shall constitute a waiver of claims for professional services fees except those previously made in writing and identified by DESIGN CONSULTANT as unsettled at the time of final Application for Payment.
- 3.2.12 DESIGN CONSULTANT agrees to maintain adequate books, payrolls and records satisfactory to the City in connection with any and all Work performed hereunder. DESIGN 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 Work. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of DESIGN CONSULTANT and all such books, payrolls and records, and shall have the right to audit same.

#### **ARTICLE IV. SCOPE OF SERVICES**

- 4.1 The DESIGN CONSULTANT shall not commence work on this proposed Project until being thoroughly briefed on the scope of the project and being notified in writing to proceed. The scope of the project and the DESIGN CONSULTANT's services required shall be reduced by the DESIGN CONSULTANT to a written Summary of the Scope meeting and included as a part of this Agreement. Should the scope subsequently

change, either the DESIGN CONSULTANT or the CITY may request a review of the anticipated services, with an appropriate adjustment in compensation.

- 4.2 The DESIGN CONSULTANT, in consideration for the compensation herein provided, shall render the professional services described in this Section that are necessary for the development of the Project as acceptable to the Director, or his duly authorized representative, hereinafter termed "Director", subject to other provisions of this Agreement.
- 4.3 The DESIGN CONSULTANT shall perform its obligations under this Agreement in accordance with Phases outlined in 2.2.3 DESIGN CONSULTANT's Scope of Services attached and incorporated herein as Attachment "1". The Scope of Services shall be the DESIGN CONSULTANT's Proposal, as revised in accordance with negotiations with the CITY and approval of the Director, and as provided in this Agreement.
- 4.4 The DESIGN CONSULTANT will advise and consult with the CITY. 4.5 Upon acceptance and approval of the plans, reports or other deliverables required for a phase of work, as set forth in the Scope of Services, Director shall authorize DESIGN CONSULTANT, in writing, to proceed with the next phase of work.
- 4.6 The DESIGN CONSULTANT will make visits to the Site at intervals appropriate to the Scope of Services.
- 4.7 Communications by and with the DESIGN CONSULTANT's consultants shall be through the DESIGN CONSULTANT. .
- 4.8 The approved Scope of Services dated April 7, 2010 is incorporated by reference herein and attached as Exhibit 1.

#### **ARTICLE V. DESIGN PHASES REQUIREMENTS**

- 5.1 The DESIGN CONSULTANT shall:
  - 5.1.1. Follow and comply with the Requirements listed in the City of San Antonio Unified Development Code, as amended, if applicable, which is incorporated by reference herein.
  - 5.1.2. Follow and comply with the Requirements for the DESIGN PHASES listed in the Scope of Services attached as Exhibit 1.

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

- 6.1 Prior to commencement of any work, DESIGN CONSULTANT shall provide CITY with a schedule of PROJECT DESIGN PHASES, Exhibit 4.
- 6.2 The DESIGN CONSULTANT shall perform and complete its obligations for the various Phases of work under Section IV "Scope of Service" of this Agreement in a prompt and continuous manner. If, upon review of phase work, corrections, modifications, alterations, or additions are required of the DESIGN CONSULTANT, these items shall be completed by the DESIGN CONSULTANT before that Phase is approved.

- 6.3 The DESIGN CONSULTANT shall not proceed with the next appropriate Phase of work without written authorization from the Director. The CITY may elect to discontinue the DESIGN CONSULTANT's services at the end of any Phase for any reason. However, if circumstance dictates, the Director may make adjustments to the scope of the DESIGN CONSULTANT's obligations at any time to achieve the required design. Any such adjustment to the scope of DESIGN CONSULTANT'S obligations must be agreed to and approved in writing by DESIGN CONSULTANT.
- 6.4 The DESIGN 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 DESIGN CONSULTANT's reasonable control. Within twenty one (21) days from the occurrence of any event for which time for performance by DESIGN CONSULTANT shall be significantly extended under this provision, DESIGN CONSULTANT shall give written notice thereof to the CITY stating the reason for such extension and the actual or estimated time thereof. If the CITY determines that the DESIGN CONSULTANT is responsible for the need for extended time, the CITY shall have the right to make a Claim as provided in this Agreement.
- 6.5 This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract, and construction of the Project including any extra work and any required extensions thereto unless discontinued as provided for elsewhere in this Agreement.

**ARTICLE VII.  
COORDINATION WITH THE CITY**

- 7.1 The DESIGN CONSULTANT shall hold periodic conferences with the Director or his representatives to the end that the Project as developed shall have the full benefit of the CITY's experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist the DESIGN CONSULTANT in this coordination, the CITY shall make available for the DESIGN 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 the DESIGN CONSULTANT. However, any and all such information shall remain the property of the CITY and shall be returned by the DESIGN CONSULTANT upon termination or completion of the Project or if instructed to do so by the Director.
- 7.2 The Director will act on behalf of, the CITY with respect to the work to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to the DESIGN CONSULTANT's services.
- 7.3 The CITY will give prompt written notice to the DESIGN CONSULTANT whenever the CITY observes or otherwise becomes aware of any defect in the DESIGN CONSULTANT's services, or any development that affects the scope or timing of the DESIGN CONSULTANT's services.
- 7.4 Unless otherwise required by the CITY, the CITY shall furnish approvals and 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. The DESIGN CONSULTANT will provide the CITY reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by the DESIGN CONSULTANT pursuant to other provisions of the Agreement, but the DESIGN CONSULTANT shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other

provisions of this Agreement.

**ARTICLE VIII.  
REVISIONS TO DRAWINGS AND SPECIFICATIONS**

- 8.1 The DESIGN CONSULTANT shall make without expense to the CITY such revisions to the drawings, reports or other documents as may be required to meet the needs of the CITY which are within the Scope of the Project, but after the approval of drawings, reports or other documents and specifications by the CITY, any revisions, additions, or other modifications made at the CITY's request which involves extra services and expenses to the DESIGN CONSULTANT shall be at additional compensation to the DESIGN CONSULTANT for such extra services and expenses, subject to Exhibit 2.

**ARTICLE IX.  
OWNERSHIP OF DOCUMENTS**

- 9.1 All previously owned documents, including the original drawings, estimates, specifications, and all other documents and data by DESIGN CONSULTANT, will remain the property of the DESIGN CONSULTANT as instruments of service. However, the DESIGN CONSULTANT understands and agrees that the 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 without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.2 All completed documents submitted by DESIGN CONSULTANT for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a Texas registered Architect/Landscape Architect licensed to practice in Texas.
- 9.3 The DESIGN CONSULTANT acknowledges and agrees that upon payment, the CITY shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Agreement and shall be used as the CITY desire and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the CITY at no additional cost to the CITY upon request or termination or completion of this AGREEMENT without restriction on future use. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.4 The DESIGN CONSULTANT agrees and covenants to protect any and all proprietary rights of the CITY in any materials provided to the DESIGN CONSULTANT. Such protection of proprietary rights by the DESIGN CONSULTANT shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the CITY. Additionally, any materials provided to the DESIGN CONSULTANT by the CITY shall not be released to any third party without the written consent of the CITY and shall be returned intact to the CITY upon termination or completion of this Agreement or if instructed to do so by the Director.
- 9.5 **THE DESIGN CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT IN PART OR IN WHOLE WAS PRODUCED FROM THIS AGREEMENT TO THE CITY, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY THE DESIGN CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF THE CITY (EXCLUDING ANY PRIOR OWNED**

**INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). THE DESIGN CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

- 9.6 The DESIGN CONSULTANT may make copies of any and all documents and items for its files. The DESIGN CONSULTANT shall have no liability for changes made to or use of the drawings, specifications and other documents by other architects and/or engineers, or other persons, subsequent to the completion of the Project. DESIGN CONSULTANT shall appropriately mark all changes or modifications on all drawings, specifications and other documents by other architects and/or engineers or other persons, including electronic copies, subsequent to the completion of the Project.
- 9.7 Copies of documents that may be relied upon by the CITY are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by the DESIGN CONSULTANT. Files in editable electronic media format of text, data, graphics, or other types, (such as DGN) that are furnished by the DESIGN CONSULTANT to the CITY are only for convenience of the CITY or utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by DESIGN CONSULTANT will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.
- 9.8 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of DESIGN CONSULTANT, including but not limited to design details, features and concepts, which are repetitive in nature, not project specific, function rather than form-oriented, and were not developed for or identifiable with the Project, any computer software (object code and source code), tools, systems, equipment or other information used by DESIGN CONSULTANT or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the DESIGN 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 DESIGN CONSULTANT or its suppliers.

**ARTICLE X.  
TERMINATION AND/OR SUSPENSION OF WORK**

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

## 10.2 Right of CITY to Terminate

10.2.1 The CITY reserves the right to terminate this Agreement for reasons other than substantial failure by the DESIGN CONSULTANT to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect on the twentieth day following receipt of said notice and upon the scheduled completion date of the performance phase in which DESIGN CONSULTANT is then currently working, whichever effective termination date occurs first.

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

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

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

## 10.4 Procedures DESIGN CONSULTANT to follow upon Receipt of Notice of Termination

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

10.4.2 Copies of all completed or partially completed 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 the CITY, in the form requested by the CITY as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in Article IX above.

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

10.4.4 The CITY, as a public entity, has a duty to document the expenditure of public funds. The DESIGN CONSULTANT acknowledges this duty on the part of the CITY. To this end, the DESIGN CONSULTANT understands that failure of the DESIGN CONSULTANT to comply with the submittal of the statement and

documents as required above shall constitute a waiver by the DESIGN CONSULTANT of any and all rights or claims to payment for services performed under this Agreement by the DESIGN CONSULTANT.

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

#### 10.5 Procedures DESIGN CONSULTANT to Follow upon Receipt of Notice of Suspension

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

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

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

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

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

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

10.5.7 The CITY, as a public entity, has a duty to document the expenditure of public funds. DESIGN CONSULTANT acknowledges this duty on the part of the CITY. To this end, DESIGN CONSULTANT understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the DESIGN CONSULTANT of any portion of the fee for which DESIGN CONSULTANT did not supply such necessary statements and/or documents.

### **ARTICLE XI. DESIGN CONSULTANT'S WARRANTY**

11.1 The DESIGN CONSULTANT agrees that the services required under this Agreement will be performed with the same degree of professional skill and care that are typically

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

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

**12.1 DEFINITIONS**

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

**12.2 For this Agreement, the Parties agree that:**

- 12.2.1 The terms of the CITY's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Agreement by reference; and
- 12.2.2 The failure of CONSULTANT or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- 12.2.3 Failure of CONSULTANT or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office

pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

12.2.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONSULTANT's SBEDA Plan ("Exhibit 3") shall constitute a material breach of the SBEDA Program and this Agreement.

12.2.5 CONSULTANT shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Exhibit 3") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONSULTANT to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

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

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

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

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

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

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

12.4.1 Terminate this Agreement for default;

12.4.2 Suspend this Agreement for default;

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

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

12.4.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the

SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

12.5 **City Process for Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final recommendation regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

12.6 **Special Provisions for Extension of Agreements.** In the event the CITY extends this Agreement without a competitive Bid process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

12.6.1 A SBEDA Utilization Goal for the extended period; and

12.6.2 A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONSULTANT does not meet the SBEDA Utilization Goal; and

12.6.3 The required minimum Good Faith Efforts outreach attempts that CONSULTANT shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONSULTANT entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

12.6.3.1 Subject CONSULTANT to any of the remedies listed above; and/or

12.6.3.2 Result in re-solicitation of the Agreement to be extended.

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**ARTICLE XIII.  
ASSIGNMENT OR TRANSFER OF INTEREST**

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

**ARTICLE XIV.  
INSURANCE REQUIREMENTS**

- 14.1 Prior to the commencement of any Services under this Agreement, the DESIGN CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Capital Improvement Management Services Department/Public Works Department/Contract Services Department, which shall be clearly labeled "Convention Center Facilities Development Study" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Capital Improvements Management Services Department/Public Works Department/Contract Services Department. No officer or employee other than the CITY's Risk Manager shall have authority to waive this requirement.
- 14.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to request modification of insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will CITY allow modification whereupon CITY may incur increased risk.
- 14.3 A DESIGN CONSULTANT's financial integrity is of interest to the CITY. Therefore, subject to the DESIGN CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the DESIGN CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the DESIGN CONSULTANT's sole expense, insurance coverage written on an occurrence or claims made basis, as appropriate, by companies authorized and approved to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

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

14.4 The CITY may request and without expense to CITY, to inspect copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY.

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

- Name the CITY and its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- To the extent not inconsistent with the requirements of the issuing insurance carrier, provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy if such endorsement is permitted by law and regulations;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY; and
- Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- 14.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, the DESIGN CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend the DESIGN CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 14.7 In addition to any other remedies the CITY may have upon the DESIGN CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the DESIGN CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the DESIGN CONSULTANT hereunder until the DESIGN CONSULTANT demonstrates compliance with the requirements hereof.
- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which the DESIGN CONSULTANT may be held responsible for payments of damages to persons or property resulting from the DESIGN CONSULTANT's or its sub-consultant's performance of the services covered under this Agreement.
- 14.9 It is agreed that the DESIGN CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this Agreement.
- 14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement as respects additional insureds.

#### **ARTICLE XV. INDEMNIFICATION**

- 15.1 **The DESIGN CONSULTANT, whose work product and services are the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, cost, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY DESIGN CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF DESIGN CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF DESIGN CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the services, rights or duties under this AGREEMENT. The INDEMNITY provided for in this 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 DESIGN CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

**ARTICLE XVI.  
CLAIMS AND DISPUTES**

- 16.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the City and DESIGN CONSULTANT arising out of or relating to the Agreement. Claims must be initiated by written notice. Every Claim of the DESIGN CONSULTANT, whether for additional compensation, additional time, or other relief shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the DESIGN CONSULTANT by his signature) of the DESIGN CONSULTANT, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 Time Limit on Claims. Claims by the DESIGN CONSULTANT or by the City must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the DESIGN CONSULTANT must be initiated by written notice to the City. Claims by the City must be initiated by written notice to the DESIGN CONSULTANT.
- 16.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, the DESIGN CONSULTANT shall proceed diligently with performance of the Agreement and the City shall continue to make payments in accordance with the Agreement.
- 16.4 Claims for Additional Time. If the DESIGN CONSULTANT wishes to make Claim for an increase in the time for performance, written notice as provided in this Section 15 shall be given. The DESIGN CONSULTANT's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.
- 16.5 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the DESIGN CONSULTANT and to claims by the City:
  - 16.5.1 No consequential damages will be allowed.

- 16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
- 16.5.3 No profit will be allowed on any damage claim.
- 16.6 **Attorney's Fees.** IN ACCORDANCE WITH SECTION 271.159 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE DESIGN CONSULTANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE AGREEMENT OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND DESIGN CONSULTANT HEREBY EXPRESSLY WAIVES SUCH CLAIMS.
- 16.7 **No Waiver of Governmental Immunity.** NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE THE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.
- 16.8 Alternative Dispute Resolution.
- 16.8.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement unless it would be impossible or impracticable under the circumstances.
- 16.8.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- 16.8.3 Mediation.
- 16.8.3.1 In the event that the City or the DESIGN CONSULTANT shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
- 16.8.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.
- 16.8.3.3 In the event the City and the DESIGN CONSULTANT are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- 16.8.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas Any agreement reached in mediation shall

be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

**ARTICLE XVII.  
SEVERABILITY**

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

**ARTICLE XVIII.  
ESTIMATES OF COST**

- 18.1 Since the DESIGN CONSULTANT has no control over the cost of labor, materials or equipment or over competitive bidding or market conditions, DESIGN CONSULTANT's opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of DESIGN CONSULTANT's experience and qualifications and represent DESIGN CONSULTANT'S best judgment as a design professional familiar with the construction industry but the DESIGN CONSULTANT cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable Cost prepared by DESIGN CONSULTANT.

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

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

**ARTICLE XX.  
CONFLICTS OF INTEREST DISCLOSURE**

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

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

- 21.1 Services provided by DESIGN CONSULTANT under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 21.2 The DESIGN CONSULTANT shall be represented by a registered professional Architect or Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings, and preconstruction meetings, and other meetings as required by the project.
- 21.3 The Texas Board of Professional Architectural Examiners Hobby Building, 333 Guadalupe, Ste. 2-350, Austin, Texas 78701, (512) 305-9000 and/or Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 4407723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.
- 21.4 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of DESIGN CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said DESIGN CONSULTANT, its employees, subcontractors, and agents.

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

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

- 22.2 The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Consultant agrees to allow the City's designee access to all of the Consultant's Records, Consultant's facilities, and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.
- 22.3 Consultant must include this audit clause in any subcontractor, supplier or vendor contract.

**ARTICLE XXIII.  
ENTIRE AGREEMENT**

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

**ARTICLE XXIV.  
VENUE**

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

**ARTICLE XXV.  
NOTICES**

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

If intended for the CITY, to:

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

If intended for the DESIGN CONSULTANT, to:

Populous, Inc  
Attention: Todd Voth, Senior Principal  
300 Wyandotte, Suite 200  
Kansas City, Missouri 64105

**ARTICLE XXVI.  
INDEPENDENT CONTRACTOR**

- 26.1 In performing services under this Agreement, the relationship between the CITY and the DESIGN CONSULTANT is that of independent contractor. By the execution of this Agreement, the DESIGN CONSULTANT and the CITY do not change the independent contractor status of the DESIGN CONSULTANT. The DESIGN CONSULTANT shall exercise independent judgment in performing its duties and obligations under this Agreement and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of the DESIGN CONSULTANT in the performance of this Agreement shall be construed as making the DESIGN CONSULTANT the agent, servant or employee of the CITY, or as making the DESIGN CONSULTANT or any of its agents

or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the CITY provides to or for its employees.

**ARTICLE XXVII.  
LEGAL CONSTRUCTION**

27.1 If any term or provision of this Agreement may be held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement, and this Agreement shall be enforced as if such invalid, illegal, or unenforceable provision was not included in this Agreement.

**ARTICLE XXVIII.  
CAPTIONS**

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

IN WITNESS WHEREOF, the City of San Antonio has lawfully caused these presents, to be executed by the hand of the City Manager, or designee, acting by the hand of NAME thereunto authorized TITLE; does now sign, execute and deliver this document.

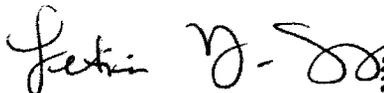
Executed on this 20<sup>th</sup> day of May, A. D. 2010.

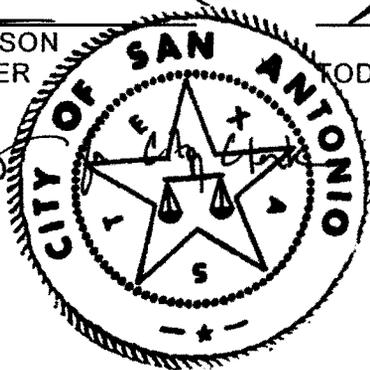
CITY OF SAN ANTONIO

POPULOUS, INC.

  
PENNY POST OAK FERGUSON  
ASSISTANT CITY MANAGER

  
TODD VOTH, SENIOR PRINCIPAL





APPROVED:

  
CITY ATTORNEY

## **EXHIBIT 1 SCOPE OF SERVICES**

The three major phases of services for this study are:

- **Phase 1 - Up-dated Expansion Feasibility Study and Market / Financial Analysis**
- **Phase 2 - Facility Condition Assessment**
- **Phase 3(a) - Strategic Up-grade and Renovation Plan; and 3(b) Service and Revenue Enhancement Plan**

Populous, as the prime consultant will administer the Contract, coordinate the work of the consultant team and act as the primary contact with the City of San Antonio all as further set forth in the Contract.

The following is provided to describe the roles of the individual consultants, the types of tasks to be undertaken in the three phases and the work products to be provided at the conclusion of each phase.

### **Phase 1 - Up-dated Expansion Feasibility Study and Market / Financial Analysis**

This phase will be led by Convention Sports & Leisure in coordination with Populous.

#### **2007 Expansion Feasibility Study Update**

Update the analysis of occupancy and related event data based on the analysis conducted as part of the past Center study. Collection and review of updated data will include, but will not be limited to:

- Event characteristics:
  - Number of events by type
  - Utilization days (move-in, event, move-out)
  - Space used, by area
  - Attendance
  - Historical utilization trends
- Square footage and occupancy by type of space.
- Event seasonality.
- Information on lost business.
- Operating revenues.
- Operating expenses.

Update assessment of the capacity, performance and limitations of the current Center and benchmark data for Strategic Upgrade and Renovation Plan.

Update previous analysis regarding current and under-construction hotels plus hotel room inventory in relation to current Center bookings, as well as current recommendations from the CVB Advisory Board.

Update evaluation of other local market conditions that impact the convention industry such as air access, entertainment offerings, retail/restaurant capacity, destination costs and related characteristics.

## **Market and Financial Analysis**

### Industry Trends Analysis Update

Provide an updated evaluation of demand, supply and other trends in the industry that may impact convention space development and event levels in San Antonio. Elements considered include:

- evolving factors considered by meeting planners in selecting a host market/facility;
- historical and anticipated industry growth rates;
- issues related to potential “overbuilding” of convention venues from a national/international and regional market perspective;
- outlook for future event space and hotel room needs;
- changes to the way event planners use a center, including evolving use of technological amenities; and
- other such characteristics.

Provide evaluation of emerging trends, summarizing the potential impact on the need for improvements to the existing Center in the near- and long-term.

Conduct several case studies where existing centers are changing to respond to business demands.

### Competitive/Comparable Facility Analysis

Update the review of the physical and operational characteristics of existing and planned facilities in the competitive set. Projects that may offer some element of comparable insight will also be evaluated. A preliminary list of the facilities is proposed below

- Anaheim Convention Center
- Austin Convention Center
- Boston Convention Center
- Dallas Convention Center
- Colorado Convention Center (Denver)
- George R. Brown Convention Center (Houston)
- Kansas City Convention Center
- Miami Beach Convention Center
- New Orleans Convention Center
- Orlando Convention Center
- Phoenix Convention Center
- San Francisco Convention Center
- Washington D. C. Convention Center

### Updated Market Demand Research

Develop current industry research specific to the San Antonio market. Telephone interviews will be conducted on a sample of past and potential users of the Center from a state, regional and national basis. Event types could include association, corporate, religious, educational, tiered

marketing, government and related organizations. These new interviews will provide up-to-date information as to the specific Convention Center improvements desired by the event planner, as well as facility space needs for events that have not been held in San Antonio recently.

### Deliverables

A draft and final report will be submitted. Electronic media will be summarized and prepared for presentations.

### **Phase 2 - Facility Condition Assessment**

This scope element will be led by Marmon Mok Architects. Work efforts will be concentrated on older portion (Halls A/B and related). Team participants will include:

- Marmon Mok                      Assessment team leader, architectural analysis and documentation
- Populous                        Facility Operations and Analysis
- Conventional Wisdom        Program analysis, staff interviews, improvement plans
- WJHW                            Existing technology systems
- Jaster Quintanilla            Civil / Structural reviews
- RGM Engineering             Electrical reviews
- Cleary Zimmerman            Mechanical reviews
- Walter P Moore                Parking analysis

Marmon Mok's services include the following for this portion of the work:

- Lead and coordinate the technical analysis team
- Assemble existing paper and electronic documents and data
- Develop basic, non-detailed Revit (BIM) model for the Center
- Lead team discussion with Center staff to review capital improvement plans
- Conduct visual surveys of existing facilities and record observations
- Coordinate work scope with JCI study

Populous' services include the following for this portion of the work:

- Meet with Center staff to review operation procedures and issues
- Evaluate materials handling and traffic flow including waste stream
- Highlight on-going maintenance items and solutions
- Review security systems and related issues, including perimeter security, CCTV, and card access
- Evaluate staff operational protocols and issues.
- Assess foodservice areas, including kitchens, pantries, concessions, and loading docks
- Review tradeshow contractor policies and procedures
- Advise Owner regarding sustainable design and operations initiatives

Conventional Wisdom's services include the following for this portion of the work:

- Staff interviews / facility tours to review current level and types of services provided to
- Review facility for condition and serviceability of key areas
- Review prior master planning and proposed facility improvement data against competitive set and evolving market trends
- Analysis effort will focus on functional areas / systems that are or will soon be outdated
- Draft assessment report containing observations and recommendations

WJHW's services include the following for this portion of the work:

- On-site observations and analysis of the building and current systems utilized
- Meet with Center staff to review operational procedures for technology systems
- Gather data on current system deficiencies and proposed up-grade programs
- Document findings

Jaster Quintanilla's services include the following for this portion of the work:

- Visual survey of site and building to gather data and record observations on existing conditions
- Meet with staff to list known deficiencies and review existing capital improvement plans
- Identify and discuss survey results with Center staff for inclusion in improvements plan
- Document findings

RGM Engineering's services include the following for this portion of the work:

- Visual survey of site and building to gather data and record observations on existing conditions
- Meet with Center staff to list known deficiencies and review existing capital improvement plans
- Identify and discuss survey results with Center staff for inclusion in improvements plan
- Document findings

Cleary Zimmerman's services include the following for this portion of the work:

- Visual survey of site and building to gather data and record observations on existing conditions
- Meet with Center staff to list known deficiencies and review existing capital improvement plans
- Identify and discuss survey results with Center staff for inclusion in improvements plan
- Document findings

Walter P. Moore's services include the following for this portion of the work:

- Analyze existing parking facilities and conditions
- Review and analyze current parking operations
- Identify existing parking opportunities within reasonable walking distance from CC
- Document findings

### Deliverables

Provide a Facility Evaluation Report to include narrative observations and analyses, photographs and / or drawings illustrating relevant findings and conditions and a schematic-level Revit model to produce general plans, sections and elevations of the existing facility.

### **Phase 3(a) Strategic Up-grade and Renovation Plan & 3(b) Service and Revenue Enhancement Plan**

This phase will be led by Populous. Work efforts will be primarily concentrated on older portion (Halls A/B and related). Team participants will include:

- Populous Design team leader, strategic planning and design, trends analysis, service and revenue enhancement
- Marmon Mok Architectural support, Revit model support, phasing
- Conventional Wisdom Revenue and trends analysis, programming options
- Rider Levett Bucknall Cost advice and estimating

- WJHW Technology upgrade recommendations
- Jaster Quintanilla Civil / Structural advisory
- RGM Engineering Electrical advisory
- Cleary Zimmerman Mechanical advisory
- Walter P Moore Parking recommendations

Populous' services include the following for this portion of the work:

- Lead the design and consultant team
- Conduct Center staff and stakeholder workshops
- Review, discuss and analyze with staff the findings of Phase 1 & 2 results
- Review, discuss and analyze with staff emerging trends opportunities
- Develop service and revenue enhancement options
- Outline programmatic recommendations arising from above
- Develop design options based on program recommendations for review by Center staff with relative costs associated
- Review and refine design options to a single, phased development design with elemental cost estimate
- Develop overall improvements listing with costs and prioritization

Marmon Mok's services include the following for this portion of the work:

- Support Populous in staff and stakeholder workshops
- Assist in developing improvements priorities
- Develop phased implementation of improvement options
- Assist in final report development

Conventional Wisdom's services include the following for this portion of the work:

- Establish functional goals and objectives based on market and revenue requirements
- In conjunction with Populous, provide service and revenue enhancement options for consideration by the Center
- Coordinate with Populous in the development of planning and design options
- Coordinate with other team members in development of recommendations based on findings
- Make recommendations for implementation of service and revenue enhancement options

Rider Levett Bucknall's services include the following for this portion of the work:

- Provide cost advisory services on up to 3 interim schemes for improvement and renovation options
- Incorporate consultant information as part of developing cost advice
- Provide concept estimates, in an elemental format, for the building(s) covered by the selected strategic up-grade and renovation scheme

WJHW's services include the following for this portion of the work:

- Based on facility survey, prepare recommendations for up-grades to technology systems
- Prepare recommendations for infrastructure up-grades
- Provide incremental phased improvement plan
- Develop order-of-magnitude costs for up-grades

Jaster Quintanilla's services include the following for this portion of the work:

- Identify basic systems to be included in up-grade / expansion options
- Identify deficiencies and recommend required repairs

- Participate in strategy discussion for phased work
- Provide narrative report

RGM Engineering's services include the following for this portion of the work:

- Electrical engineering support Identify basic systems to be included in up-grade / expansion options
- Locations of major electrical equipment spaces in expansion / renovation areas
- Identify deficiencies and recommend required repairs
- Participate in strategy discussion for phased work
- Provide narrative report

Cleary Zimmerman's services include the following for this portion of the work:

- Mechanical /plumbing engineering support Identify basic systems to be included in up-grade / expansion options
- Locations of major mechanical equipment spaces in expansion / renovation areas
- Identify deficiencies and recommend required repairs
- Participate in strategy discussion for phased work
- Provide narrative report

Walter P. Moore's services include the following for this portion of the work:

- Evaluate major parking generators near Center for shared parking opportunities
- Evaluate enhanced revenue opportunities from parking management program
- Provide recommendations for improvements to existing operations
- Document findings and recommendations

## EXHIBIT 2

### COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

The Compensation as described in Article II and EXHIBIT I of this Agreement establishes the compensation to the DESIGN CONSULTANT for all services to be performed by DESIGN CONSULTANT or under its direction except the services as set forth below. These additional services and the compensation to be paid by the CITY to the DESIGN CONSULTANT for their performance when authorized in writing by the Director or his representative are set forth as follows:

- A. The basis for compensation for additional services may be in one or more of the following forms:
1. \$100.00 per hour for testimony of principals.
  2. Direct salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded, other than testimony of principals.
  3. Reimbursement of non-labor expense and subcontract expense at invoice cost plus a 15% service charge.
  4. Lump sum [to be negotiated at time of requested additional services.]
  5. Lump sum per item of work [to be negotiated at time of requested additional services]
- B. Examples of additional services (not all inclusive).
1. Assistance to the CITY as an expert witness in any litigation with third parties arising from the development or construction of the Project including the preparation of architectural and/or engineering data and reports.
  2. Preparation of plats and field notes for acquisition of property required for the construction of the project.
  3. Preparation of applications and supporting documents for Governmental grants, loans or advances in connection with the Project; Preparation or review of environmental assessment and impact statements; Review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approval of authorities having jurisdiction over the anticipated environmental impact of the Project.
  4. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the DESIGN CONSULTANT.
  5. Providing detailed information of:

- a. Owning, operation, maintenance and overhead costs of material and equipment, or
  - b. Quantity surveys of material, equipment and labor, or
  - c. Inventories of material and equipment, or
  - d. Investigations, surveys, valuations, inventories or detailed appraisals of facilities, construction and/or services not required by the Base Contract.
6. Cash flow and economic evaluations, rate schedules and appraisals.
  7. Audit or inventories required in connection with construction performed by the CITY.
  8. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by CONSTRUCTION CONTRACTOR(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by CONSTRUCTION CONTRACTOR.
  9. Services during out of town travel required of DESIGN CONSULTANT.
  10. Additional services during construction made necessary by:
    - a. Work damaged by fire or other cause during construction.
    - b. A significant amount of defective or neglected work of CONSTRUCTION CONTRACTOR(s).
    - c. Failure of performance of CONSTRUCTION CONTRACTOR(s).
    - d. Acceleration of the progress schedule required by the CITY involving services beyond normal working hours.
    - e. Default by CONSTRUCTION CONTRACTOR(s).
  11. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
  12. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
  13. Services after completion of the construction phase, such as inspections during any guaranteed period and reporting observed discrepancies under guarantee called for in any contract for the Project.
  14. Providing services of Geotechnical Engineering Firm to perform test borings and

other soil or foundation investigations and related analysis

15. Additional copies of contract documents, review documents, bidding documents, reports, drawings and specifications over the number specified in the Base Contract.
16. Preparation of all documents dealing with 404 permits, highway permits, and railroad agreements.
17. Preparation of driveway plats.
18. Providing photographs, renderings or models for CITY use.
19. Providing services of aerial mapping firm.
20. Providing services to investigate existing conditions or facilities or to make measured drawings thereof or to verify the accuracy of drawings or other information furnished by the CITY.
21. Providing services for exploration of utilities to include detailed measurements, surveys and verification of information provided by CITY and/or utility companies.
22. Preparing drawings, specifications and supporting data and providing other services in connection with Change Order Requests to the extent that the adjustment in the basic compensation resulting from the adjusted construction cost is not commensurate with the services required of the DESIGN CONSULTANT, provided such Change Order Requests are required by causes not solely within the control of the DESIGN CONSULTANT.
23. Providing other services not otherwise included in this Agreement which are not customarily furnished in accordance with generally accepted architectural and/or engineering practice.
24. Providing services of DESIGN CONSULTANT for other than the normal architectural, engineering, structural, mechanical, civil and electrical services for the Project.
25. Providing the services of material testing laboratory for detailed mill, shop and/or laboratory inspection of materials or equipment.

C. Fee Eligible

1. Fee eligible as it relates to Change Orders is defined as requiring significant architectural or engineering effort to compute and document the work effort reflected by the Change Order. Determination of "Fee Eligible" shall be made by the CITY Engineer.

D. Salary Cost

1. Salary cost is defined as the cost of salaries of architects, engineers, draftsmen,

stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

E. Principals of the Consulting Firm

1. For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

**PRINCIPAL** \$TBD per hour (to be negotiated at time additional services are requested).

**EXHIBIT 3**  
**SBEDA DOCUMENTS**

**See attached**

**LIST OF SUBCONTRACTORS/SUPPLIERS**

The Bidder/Proposer, Populous, as part of the procedure for the submission of bid/proposals on a project known as ***Convention Center Facilities Development Study RFP*** submits the following list of subcontractors/suppliers for proposed subcontracting areas (use additional sheets if necessary) to be used in the performance of work to be done on said project.

NAME OF SUBCONTRACTOR/SUPPLIER	SBE-MBE-WBE-AABE CERTIFICATION NO.	PERCENT AND DOLLAR AMOUNT OF SUBCONTRACT
Marmon Mok	N/A	11.6%
Conventional Wisdom	N/A	10.1%
Conventions Sports & Leisure	N/A	7.1%
Rider Levett Bucknall	N/A	3.5%
Augusta Group	N/A	0.0%
Wrightson, Johnson, Haddon & Williams	N/A	1.6%
Jaster-Quintanilla	SBE-MBE #207110348	3.2%
Cleary Zimmermann	SBE #209022804	6.0%
RGM Engineering	SBE-MBE-VBE #209114787	4.2%
Guido Construction	SBE-WBE #208092087	0.0%
Walter P Moore	N/A	1.4%

The following section is to be completed if the contract (Project) is for less than \$200,000. Please list subcontracting solicitations to all SBE-MBE-WBE-AABE contractors for participation on project. If none, explain (exclude successful bidders listed above). Use additional sheets if necessary. **The contractor is expected to solicit participation on subcontracts from available MBE-WBE-AABE-SBEs under this contract.**

NAME OF COMPANY PERFORMING WORK	SBE-MBE-WBE-AABE CERTIFICATION NO.	REASON FOR REJECTION

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors/suppliers may obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the proposal of the Request for Approval of Change to Affirmed List of Subcontractors/Suppliers).

**AFFIRMATION**