

ORDINANCE 2013-09-12-0640

AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH ECONOMIC AND PLANNING SYSTEMS, INC. FOR CONSULTING SERVICES TO CONDUCT COMPREHENSIVE PLAN STUDIES IN AN AMOUNT NOT TO EXCEED \$200,000.00.

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WHEREAS, the City Council adopted the current Master Plan Policies on May 29, 1997 to provide a functional framework to guide in the development and implementation of policies to promote the future Vision for the City; and

WHEREAS, the City Council is now desirous of updating the 1997 Master Plan Policies to help identify where future growth is feasible and cost effective for the City of San Antonio to accommodate the 1.1 million additional people projected to inhabit Bexar County by 2040; and

WHEREAS, an update to the San Antonio Comprehensive Plan will include: updating the 1997 Master Plan Policies; implementing SA2020, a plan to accommodate and guide the distribution of projected growth; identification of the form of future physical development; developing a strategic decision making guide for issues such as annexation, transportation and land use planning, infrastructure investment and incentives; and developing a strategy to reconcile existing plans, policies, and assumptions; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to hire an independent firm to provide consulting services to the Department of Planning and Community Development for developing an update of the San Antonio Comprehensive Plan; and

WHEREAS, a panel comprised of City staff reviewed qualifications and interviewed three independent firms, and selected Economic and Planning Systems, Inc. as the most qualified firm; and

WHEREAS, to ensure that the Comprehensive Plan conforms with current trends and aspirations for City growth, this ordinance authorizes a contract for consulting services with Economic and Planning Systems, Inc. to conduct three technical studies, **NOW THEREFORE**,

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

SECTION 1. The City Manager or her designee is hereby authorized to execute a contract with Economic and Planning Systems, Inc., for consulting services to conduct comprehensive planning studies in an amount not to exceed \$200,000.00, that contains substantially the same terms and conditions as those set out in the draft contract attached hereto as **Attachment "I"**. Should the parties fail to execute a contract that contains substantially the same terms and conditions as those set out in the attached draft contract, further City Council authorization shall be required.

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SECTION 2. Funding in the amount of \$200,000.00 for this ordinance is available in Fund 29097000, Cost Center 5001010001, General Ledger 5201040, as part of the Fiscal Year 2013 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Economic and Planning Systems, Inc. and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 12th day of September, 2013.


M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



For Michael D. Bernard, City Attorney

Agenda Item:	12 (in consent vote: 5, 6, 7, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8I, 9, 10, 11, 12)						
Date:	09/12/2013						
Time:	11:01:42 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a contract with Economic and Planning Systems, Inc. for consulting services to conduct comprehensive plan studies in an amount not to exceed \$200,000.00. [David Ellison, Assistant City Manager; John Dugan, Director, Planning & Community Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

**PROFESSIONAL SERVICES AGREEMENT
FOR
Comprehensive Plan Studies**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the 12th day of September, 2013 and Economic & Planning Systems, Inc. by and through its Managing Principal, Andrew M. Knudtsen (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

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

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the director of City’s Planning and Community Development Department.

“Subconsultant” engineering firm shall mean Vickrey and Associates, and includes its successors,

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 12, 2013 and terminate on August 31, 2014.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

III. A. OBJECTIVE

The City of San Antonio is updating its Comprehensive Plan, and requires studies on three key areas to be incorporated into the plan: infill development capacity; future jobs, economic opportunity and housing; and the fiscal impact of alternative growth scenarios. The scope of services will provide an analysis to determine how the City will accommodate a percentage of the projected 1.1 million additional residents in Bexar County. This analysis and report will be comprised of three components to be conducted by the Consultant.

III.A.1. COMPONENT 1

Infill Development Capacity Analysis

The Infill Development Capacity Analysis will be the first component of to be completed. This component will assess the land and infrastructure capacity necessary for employment and housing to accommodate additional development within the existing City limits and its extraterritorial jurisdiction.

The primary components to be assessed are water/sewer, roads/transit, land availability/development ability (e.g. underutilized sites; sites with potential for transformation through increased density and intensity). Analysis related to drainage, gas, and electric capacity should be secondary to the analysis for land availability and the capacity of water and sewer.

The professional analysis shall identify and detail three outcome components:

- a. Locations that are the most shovel-ready (residential and employment sites) by 2040 for redevelopment. The locations shall be broken down in ten year increments and by land use type (employment or housing).
- b. Locations which could be made shovel-ready by 2040 with some investment (e.g. brownfield clean-up, water/sewer upgrades and how much the upgrades might cost.)
- c. Locations which would be candidates for higher density and intensity zoning based upon apparent excess capacity.

To complete Component 1, the following tasks shall be conducted.

1.1 Land Capacity

In this series of tasks, the Consultant shall address land capacity and the actions the City can take to expand infrastructure and increase the amount of developable land suited for employment and residential growth.

1.1.1 Baseline Data

Consultant shall identify the City's land inventory and assemble comprehensive land information datasets and digital map layers. City will provide zoning, land

use, parcel boundaries, extraterritorial jurisdictions, Major Thoroughfare Plan and other City maintained data. Consultant shall obtain utility datasets from outside agencies to include CPS for electric and gas, SAWS for sewer and water, and VIA for transit system. Consultant shall create additional layers as necessary for analysis to assess the City's assets and determine future actions to accommodate growth.

1.2 Typology

Consultant shall categorize current and future land use into typologies that include Greenfield, Brownfield, and Transformational.

Greenfield sites are those which are not currently developed. Consultant shall further define this category to define gradients of "raw land" given that Greenfield sites have many subcategories that affect developability.

Brownfield sites are redevelopment sites that may require activity to prepare the site from the previous use to a future use due to contamination or other issues. Brownfield sites range in redevelopment potential, clean-up, and remediation costs. Accordingly, the data set shall account for the different gradients of brownfield opportunity to differentiate those representing reasonable opportunities and those for which costs and other complicating factors effectively eliminate redevelopment potential.

Transformational sites are the areas in San Antonio which represent redevelopment potential, recognizing current land use that is viable, yet underutilized. The transformational areas of a community are often those of great interest, as they can help transform an area and build momentum that leads to more change. Many cities, including San Antonio, recognize the potential to incentivize transportation with policy, financing, and infrastructure investments. Consultant shall establish criteria with quantitative and qualitative analysis to identify areas with the largest upside impacts and the least amount of downside impacts.

1.3 Geographical Scale

Consultant shall document the land supply and evaluative layers by subarea, based on direction provided by the City. The granularity of geography must provide sufficient detail to be meaningful, yet maintain a reasonable scale to cover the region. Consultant shall present a methodology to the City for creating subareas that align with Census tract boundaries, TAZ (Traffic Analysis Zone) boundaries, existing City delineations, and major infrastructure service areas. A subarea scale of 50,000 to 70,000 acres may be used, but a smaller scale may be recommended for San Antonio after Consultant conducts initial analysis.

1.4 Evaluative Layers

Once Consultant identifies potential development areas by type, Consultant shall construct a series of GIS layers and data sets that will function as the framework of evaluation. The additional layers may be viewed as the technical elements that illuminate characteristics of the land supply. These layers shall provide the quantifiable data that

reveal conditions of specific areas/sites and their relevancy to the City's long-term land demand forecasts (to be addressed in Component 2). Potential layers shall include, but are not limited to,

- a. Current worker flow patterns, linking place of employment to place of residence [Source: LEHD (Longitudinal Employer–Household Dynamics) Census Data]
- b. Concentration of current employment (number of jobs) by location, broken out by aggregate two-digit NAICS (North American Industry Classification System) sector [Source: QCEW (Quarterly Census of Employment and Wages) from the US Bureau of Labor Statistics]
- c. Rate of development acres by year for the past five years of commercial and industrial development by parcels. [Source: CoStar Group, commercial data]
- d. Large parcels that can accommodate major employers requiring substantial land area. [Source: GIS parcel layer]
- e. Amount of floor area of commercial real estate and industrial facilities that exist today shown by subarea [Source: CoStar Group]
- f. Rate of development of single family homes and multi-family structures by census tract from 2000 to 2010 (US Census)
- g. Redevelopment areas or overlays already designated by the City of San Antonio
- h. Subarea plans completed by the City Planning Department
- i. Major master planned communities and business/industrial parks approved by the City of San Antonio
- j. Transit plans, existing and proposed (VIA)
- k. Density of population by tract (US Census)
- l. Household income patterns showing the degree above and below the Area Median Income (US Census)

Depending on the metric, Consultant shall quantify by parcel, Census tract, and subarea, and evaluate the data to understand land supply opportunities through 2040. Consultant shall use these layers to identify the subarea of the region that are most suitable for future employment and housing development. The suitability analysis shall be based on a ranking of the criteria developed with input from the City. For example, it is likely that the emphasis and opportunities will be on infill, transportation areas, and locations identified for additional density. Consultant shall evaluate the opportunities using the

evaluative layers and develop criteria to summarize the analysis in a way that clarifies what land areas can accommodate growth.

1.5 Infrastructure Capacity

1.5.1 Current Infrastructure Systems

Consultant shall work with subconsulting engineering firm, “Subconsultant,” who will take the lead on providing a comprehensive understanding of regional infrastructure capacity. Subconsultant will assemble data from CIMS, Public Works, SAWS, CPS, and other utility providers as needed and convert the data to shape files and GIS layers that can be incorporated into the larger analytics. Data to be provided includes, but is not limited to:

- a. Water/Sewer: Subconsultant shall utilize SAWS existing block maps for potable water and sanitary sewer to identify approximate locations of existing utilities in the project area. If necessary, subconsultant will meet with SAWS staff to determine proposed improvements in the subareas. This information will be compiled in a GIS geodatabase that will also include age of infrastructure, pipe materials, and proposed improvement schedules, if available.
- b. Roads/Transit: Subconsultant shall work with City’s CIMS and Public Works Departments to identify existing roadway conditions and develop a database that includes the City’s Pavement Condition Inventory (PCI) for each of the roadways analyzed. Subconsultant shall also work with the VIA Metropolitan Transit Authority to identify existing transit facilities in need of improvement in the study areas and proposed transit facilities. Subconsultant shall also work with San Antonio-Bexar County Metropolitan Planning Organization (MPO) to determine projects outlined in the long-range and short-range plans.
- c. Drainage: Subconsultant shall review the City’s neighborhood/citizens’ complaints and known flood-prone areas, as well as as-built plans of existing drainage infrastructure. Subconsultant shall utilize this data to develop a GIS database that will also include locations and conditions of existing storm sewer infrastructure. When available, Subconsultant shall also convert the City’s AutoCAD as-built drawings into Shape files to easily update the GIS database with existing construction plans. If necessary, Subconsultant shall also perform a hydraulic analysis on storm sewer systems, where applicable, to determine if it meets the City’s capacity requirements.
- d. Dry Utilities: Subconsultant will work with CPS Energy, AT&T, Time Warner Cable and other fiber optic and petroleum utility purveyors to obtain and review as-built drawings or “block maps” to identify the approximate location of those utilities as well as their material type and condition, if available.

1.5.2 Planned Infrastructure Investments

Subconsultant shall document planned investment by the City or other regional providers. These investments will include regional trunk infrastructure as well as major plant expansions and/or corridor improvements. The proposed investments will cover the following categories:

- a. Water/Sewer - The San Antonio Water System (SAWS) is beginning a system-wide Sanitary Sewer Overflow (SSO) remediation project as regulated by the Texas Commission on Environmental Quality (TCEQ) to avoid costly fines. The project includes analyzing the entire sanitary sewer system to determine areas of storm water inflows and infiltrations into the sanitary sewer systems. The analysis includes identifying cracked pipe, root intrusions, manhole conditions and surcharge areas.
- b. Roads/Transit – The City’s CIMS Department recently completed the Capital Improvements of the 2007 Bond Program and is ramping up with improvements identified in the City’s current \$550 million 2012 Bond Program which includes primarily roadway and drainage improvements. Subconsultant shall work with San Antonio-Bexar County Metropolitan Planning Organization to determine projects outlined in the long-range and short-range plans
- c. Drainage – The Subconsultant shall research information regarding any drainage impediments and corresponding proposed improvements.
- d. Dry Utilities. Subconsultant will work with CPS Energy, AT&T, Time Warner Cable and other fiber optic and petroleum utility purveyors to obtain planned improvements.

1.5.3 Actions Required by the City to Address Deficiencies

Subconsultant shall identify the systems and/or areas which are insufficiently served at this time and what infrastructure expansions are required to service new areas. The evaluation of expansion will be provided in five-year increments, and will be overlaid within GIS to show which subareas can become developable and under what terms.

Subconsultant shall provide an assessment of the various methods for expanding infrastructure to address the reasonableness of various incremental additions. Factors such as system capacity, engineering feasibility, purview of the service provider, and reasonable costs will be used to determine which systems can be expanded to which subareas.

1.6 Mid-Course Meeting

Consultant shall meet with City representatives and stakeholders to review the technical findings developed in the previous tasks. The purpose of the meeting is to gain information from local leaders who may have knowledge of certain geographic areas

and/or systems. The goal is to increase the team's understanding of larger trends and issues and develop a screen to assess the findings formed in the following task.

1.7 Land Supply by Type and Timeframe

In this task, Consultant shall integrate the analysis conducted in the previous three tasks and develop land supply estimates by type and timeframe. The team will apply a methodology for ranking subareas by readiness, accounting for infrastructure availability, market performance, and land use suitability. Within each of these major headings, Consultant shall identify sub criteria to generate refined factors to document the timing for development. The evaluative factors will reflect the City's priorities and perspective through which the team assesses readiness, including a method for assessing the expansion of infrastructure throughout the region.

The deliverable shall be a document that summarizes the analysis above for Greenfield, Brownfield, and Transformative areas. The analysis shall provide the total acreage within each category, and then segment by ten-year increments based on the City's readiness and the actions that must be taken to achieve readiness. The total will be broken out to identify developable land (for employment and residential uses) by time frame, using ten-year increments through 2040.

Within a complex data base, the total for each time frame shall be further delineated by parcel, TAZ, or subarea with the actions required to achieve developable status. Each recommendation for infrastructure improvements shall include a discussion about the purview of the City in implementing the needed actions and the reasonableness of these actions. Consultant will note key assumptions about capital improvement costs, corresponding City responsibilities, potential cost recovery mechanisms, and other issues of substance affecting the expansion of infrastructure and the resulting impact on land availability.

Component 1 Deliverables

Consultant shall develop and provide the following:

- Summary document of Land Capacity that includes baseline data, typologies, geographical scale, and evaluative layers.
- Summary of Current and Planned Infrastructure Systems
- Summary of Actions Needed to Upgrade Systems for Growth
- Summary of Land Supply by Type and Timeframe

III.A.1. COMPONENT 2

Analysis of Future Jobs, Economic Opportunity, and Housing Provision

For Component 2, based on the capacity analysis in Component 1, Consultant shall identify areas for future major and minor employment centers to supply jobs through 2040. This market, economic, development, and housing analysis will assess: a) the likely type and location of future jobs, and b) the relationship of these jobs to the type and location of future housing. The projected 1.1 million additional people in Bexar County may require 500,000 new jobs, and up to

500,000 new housing units. This analysis will provide context for the feasibility of accommodating these projected jobs and housing units within the City limits and its ETJ.

The purpose of Component 2 is to identify the demand for employment uses by development type and to project the corresponding demand for housing in the City of San Antonio over the next 30 years. The estimated demand for each land use will be evaluated within the context of the land supply and readiness of the previously identified development sites and development potential for each.

To complete Component 2, the following tasks will be conducted.

2.1 Component 2 Kick-off and Market Conditions Interviews

The Consultant shall conduct a Component 2 kick-off meeting to solidify the approach to the Component 2 methodology, and confirm the findings of the research conducted at that point for Component 1. The Consultant shall also conduct a series of targeted interviews of San Antonio economic development leaders and local real estate developers to assess the market conditions in San Antonio to provide focus for the Component.

2.2 Future Employment Development Demand

2.2.1 Employment Driver Analysis

This task will focus on understanding the broader economic context of population growth, job growth, changes in basic industries, and space demand as it relates to future demand for commercial and industrial space in San Antonio. The Consultant will document historical growth in commercial and industrial space and any shift in the types of space demanded by employment sector on both the regional level and in the City. The Consultant shall meet with local economic development professionals and review available reports and data to identify key industrial growth drivers and employment sectors likely to impact future growth in the San Antonio region.

2.2.2 Employment Forecast by Industry

Using the regional total employment projection as a control, Consultant will forecast the future employment changes by industry (2-digit NAICS level). The forecast by industry will be then translated into demand for commercial and industrial space.

Consultant shall evaluate the growth rates by industry to determine volatility and stability in each of San Antonio's major industries. Future growth assumptions will be determined by comparing historic rates, national level growth trends, regional competitive advantage, and location quotients. Consultant shall analyze economic and demographic trends for the previous 20 to 40 years. Factors and relationships will be calibrated for use in a forecast model based on extensive analysis of these data, including: wage and salary jobs by industry; in- and out-commuting patterns;

proprietors; unemployment rate; group quarters; and the proportion of population outside a working age (16-65).

2.2.3 Employment Land Demand Projection by Development Type/Use

For each employment industry, Consultant shall evaluate prospective employment growth, space needs (i.e., building types), land requirements, and location preferences and will develop a model that will allocate projected jobs to different types of workspace at appropriate employment densities to develop a measure of future commercial and industrial space demand in the City. Consultant shall determine factors such as space use per employee, building intensity, siting, and configuration for various types of commercial development.

An assessment of the demand for commercial retail space in the City shall be based on spending patterns and projections of population, tourism, and household growth. Consultant shall use its retail demand model to estimate future retail demand based on the typical spending by Texas households on retail categories which will then be translated to demand for retail space based on industry sales per square foot averages.

2.2.4 Synthesize Results and Project Employment Land Requirements

The Consultant shall synthesize the results of Tasks 2.2.1 through 2.2.3 in a deliverable that will illustrate the current trends and projected demand for industrial and commercial real estate, evaluate economic drivers expected to shape the regional economy, and predict plausible ranges of industrial and commercial real estate land demand from 2013 to 2040 with an annual average estimate. This assessment will account for the regional control totals and will include specificity that addresses projected acreage requirements for major land use types, such as retail, office, and industrial.

2.2.5 Identification of Future Major and Minor Employment Centers

Consultant shall use the employment land forecast by type to identify development areas that are best suited to capture the employment growth. Major and minor employment centers will be identified on the land development sites identified in Component 1.

2.3 Future Housing Development Demand

2.3.1 Currently Housing Supply

Consultant shall work with City staff to create an inventory of the existing housing supply. The inventory should include information on the conditions of housing stock, type, tenure, and proximity to services, transit, schools, shopping, and other amenities. The housing conditions analysis will allow Consultant to evaluate how the existing housing stock meets current City needs and how existing housing stock's

ability will support future growth. Another integral part of defining the supply conditions The inventory will accurately assess the housing types that have been developed in the City and are supported by City zoning regulations. Consultant shall analyze the housing market conditions and evaluate the development trends present in the City of San Antonio to understand the local market dynamics. Identifying the housing type potentials will be an integral part of defining the typologies that can support identified land areas for development, as described in the next task.

2.3.2 Housing Demand Typologies

Consultant shall use standard housing typologies (e.g. single-family, multi-family) to establish data-driven factors to estimate land demand. From these standard typologies, two sub-sets of typologies will be established, the first addressing neighborhood characteristics and the second addressing housing type aspects. The typologies for housing unit types will be formed using the following factors; unit type and size, ownership scenario (owned or rented), and unit density/intensity. The typologies for neighborhood characteristics will cover amenities, transit, services, employment, and location.

Consultant shall evaluate each of the development areas to document their strengths and weaknesses from a market capture perspective. Consultant shall document the competitive advantages and identify the potential for change and/or stability and which areas are poised to capture which types of growth. This task will also address the transformational nature of the identified redevelopment areas and will account for change in employment, location of the major and minor employment centers, and changes in market trends.

2.3.3 Housing Land Demand Projection by Typology

Consultant shall document housing demand by time period and will convert the unit projections to land area. Consultant shall correlate housing demand with land supply based on land context determined in Component 1. Consultant shall identify lands that are suitable for housing, identify the types of housing in demand for each growth area, and estimate the demand for housing for each area over ten year time periods. Consultant shall factor in demand that allows for market competition and timing variables. Annual land supply targets will be provided as a range, to accommodate for market cycles and changing of market conditions.

2.4 Land Use and Demand Projections for Development Sites/Areas

In this task the market readiness of each subarea will be assessed and ranked for either short, mid or long term readiness. The projected land use(s) for each of the subareas will be identified.

2.5 Allocation of Development by Subarea

This task is the combination of work completed in Components 1 and 2.

2.5.1 Alignment of Land Demand and Land Supply

The Consultant shall develop a scenario that aligns the projected land demand with the land supply. Consultant shall identify a core set of opportunities that represent the sites with the highest priority opportunities for locating future employment and residential uses. It is expected that this first tier of sites will account for a majority of the demand and that the City should structure its plan and policies around them.

Consultant shall identify a second tier of sites that can be considered to meet the full land demand identified by the study. It is expected that these will have some higher costs, lower market demand, or other extenuating factors that limit their appeal. Consultant will work with the City to vet the second tier and describe the complexity and challenges associated with this tier.

Consultant will also conduct a work session with City staff to review the first and second tier allocations together. The work session will focus on how to best allocate growth to subareas in order to best relate to potential scenarios the MPO will create.

2.5.2 Allocation of development to subareas and Dram/Empal interface

Based on feedback from the previous task, Consultant will complete a comprehensive allocation of development to each City subarea. The allocation will include amount of square feet and/or dwelling units per time period (short, mid or long) for each subarea. The Consultant will create a data set that will be compatible with, and can be integrated into, the MPO's Dram/Empal model.

Component 2 Deliverables

Consultant shall develop and provide the following:

- Market Demand Forecast Memorandum
- Summary of the findings from the market demand analysis in Component 2 to aid in the formation of the growth scenarios.
- City Subarea Development Readiness and Market Readiness Rankings
- Matrix of the City Subareas that combines the Development Readiness and Market Readiness rankings, needed infrastructure improvements and the development demand projections for each subarea.
- Dram/Empal Compatible Dataset
- Dataset that is Dram/Empal compatible and used to create MPO scenarios.

III.A.3. COMPONENT 3

Alternative Scenario Fiscal Impact Analysis

The City will provide the results of the first two studies to the MPO Planning team to update the San Antonio-Bexar County MPO 2040 Metropolitan Transportation Plan. The MPO will develop three possible 2040 development build out scenarios (distribution of jobs and households). The

third Component of this scope is to provide a fiscal analysis of the three scenarios for the City of San Antonio. The fiscal impact of each scenario shall include both cost and revenues.

The purpose of Component 3 is to evaluate the fiscal impact of growth scenarios on the City of San Antonio over the next 30 years. Consultant shall identify the major costs and revenues in the City's budget that is impacted by growth. These major costs and revenues estimate the future net impact of each development scenario on the City. Consultant will utilize their previous work in creating a Sustainable Economic Impact Model for the City's Office of Environmental Policy, Consultant will measure the social, environmental and economic impact of the scenarios based on a select number of factors that can be directly attributed to growth.

Consultant shall establish factors that can measure a difference in the fiscal impact of different growth scenarios. The fiscal model will incorporate the identifiable factors that can be adjusted based on the local, national and geographic characteristics of the scenarios developed..

To complete Component 3, the following tasks will be conducted.

3.1 Cost Analysis

This task will involve determining applicable operating and capital cost factors for the fiscal impact model through the following steps:

3.1.1 Department Interviews

Consultant shall conduct a kick-off meeting with the City's project staff. On this initial project trip, Consultant will conduct interviews with staff from key departments to understand the costs and requirements of providing existing services as well as identify major operating and capital cost items affected by future development by land use type and location. Consultant will also work with each department manager to document their operation, maintenance, and capital replacement costs and identify the thresholds at which the City incurs these different types of costs.

3.1.2 Operating Cost Factors

Consultant shall determine operating cost factors to be applied to the major operating costs in City departments. The cost factors will be developed according to the relationship of new development to the provision of city services, such as a cost per household, per resident, per square foot or equivalent residential unit (ERU), per person served, or per mile of road. Consultant shall analyze detailed budget data and interview key staff to determine the ratios of variable and fixed costs by department to estimate the marginal cost of serving new development. Consultant shall also strive to determine non-linear relationships from economies of scale, or new costs triggered at a certain threshold of development. Consultant will also develop factors to differentiate between service costs by location and context (greenfield versus infill) within the City.

3.1.3 Growth Capital Cost Factors

The most significant marginal cost differences between different development typologies and locations are often associated with capital costs rather than operating costs. The extension of major infrastructure, particularly roads, water, sewer, and parks, or development in a new un-served area, often have the largest fiscal impacts.

Capital costs are often project specific and can be hard to identify at a City-wide level. These costs can include lane miles of roads or trails, acres of parks, or offsite improvements. New facilities that are needed to maintain service standards, such as fire and police stations, or recreation centers can also be triggered by a development project. Consultant shall work with City staff to identify frequent capital costs and develop an input module so that these costs can be included in the analysis.

City departments also have operating capital and capital replacement costs which are affected by growth and development. Consultant will work with each department manager to document their capital replacement costs and identify the thresholds at which the City incurs these different types of costs.

3.1.4 Major Capital Improvement Costs

The major infrastructure improvements needed to make certain development areas developable, which were identified in Component 1, will serve as the basis of the major capital cost estimates. Subconsultant will give planning level estimates for the major costs associated with each needed major improvement. The needed improvements per each scenario will be determined and factored in to the capital cost of development in the fiscal impact model.

3.2 Revenue Analysis

This task will involve determining the relationships between city revenues by source and new development by land use category.

Consultant shall analyze the current City budget and CAFR (Comprehensive Annual Financial Report) to quantify existing City revenues by source and determine the relationship between revenues and existing population and land use development categories. Consultant shall estimate revenues through average cost/revenue factors and through case studies. These estimates shall include major and minor revenues. Minor revenues such as licenses and permits shall be estimated using average revenue factors, e.g. per household or per person served, and the appropriate marginal revenue factor. Major development specific revenues such as property tax, sales tax, and development fees and permits shall be estimated through more detailed case study calculations, and follow City protocols for fee calculations.

3.3 Fiscal Model

3.3.1 Fiscal Model Construction

The Consultant shall construct a fiscal model that will contain a database of the most relevant cost and revenue data. The model will utilize economic factors describing the relationships between land use category, type of resident, and geographic location and related City costs and revenues. It will have a scenario feature which will allow for testing of the related costs and revenues and net fiscal impact associated with development alternatives (i.e., alternative development typologies, different market value assumptions, and/or growth rates).

The model shall include a Net Fiscal Impact summary divided into two categories: ongoing impacts that can be tested at various points in time, and one-time impacts. The ongoing net fiscal impact is the difference between the annual revenues generated and the annual service costs. One time impacts are typically capital costs and any offsetting permit or development fees, or negotiated developer payments or cost sharing agreements. The model shall estimate the net fiscal annual and total one-time impacts of each scenario in the year 2040, in order to compare the three scenarios.

3.3.2 Sustainable Economic Impact Model Modification

In 2010, Consultant built a Sustainable Economic Impact Model for the City's Office of Environmental Policy. The model tested the economic, social and environmental impact of sustainable initiatives including: reduction in household water consumption, increase in local renewable energy production, reduction annual auto VMT, increase in household energy efficiency, and increase in compact development. The model will calculate the impact of these policies on environmental factors (GHG Emissions, NOx Ozone Emissions, water consumption and water pumped out of Edwards Aquifer, auto waste production, electricity and natural gas consumption, land consumption), economic factors (one-time and annual economic impact, fiscal impact), and social factors (changes in disposable income, obesity rates, deaths, accidents, and other health factors). Consultant shall modify this model and its factors to estimate the sustainable impacts of the growth scenarios where possible and applicable.

Component 3 Deliverables

Consultant shall develop and deliver:

- Fiscal Impact of Growth Scenarios
- A fiscal model with an evaluation of alternative growth scenarios (provided by the City and MPO) and document the impacts to fiscal balance by each. The findings of the analysis will be summarized in a Component 3 report and presented to the City, with an emphasis on the land use policies and actions the City can take that correspond to certain fiscal outcomes.
- Sustainable Impact Analysis of Each Scenario
- Consultant will evaluate the sustainable impact of the growth scenarios on a select few of environmental, social and economic factors that can directly be related to the growth scenarios. The findings will be summarized in a Component 3 report and presentation the City can use as a supporting factor the City's evaluation of the growth scenarios.

B. TIMELINE

1. The contract will be for one year: September 12, 2013 through August 31, 2014. This work is time sensitive with much of the work to be completed by February, 2014.

Component One

September 2013 through February, 2014

Draft Analysis due November 2013

Finalized Report due February 2014

Component Two

October 1, 2013 through May 2014

Draft Analysis due December 2013

Finalized Report due March 2014

Component Three

December 1, 2013 through May 2014

Draft Analysis due February 2013

Finalized Report due May 2014

C. ADDITIONAL SPECIFICATIONS

1. Consultant team hired must be able to utilize and produce data compatible with the Dram/Empal Modeling System.
2. All data shall be evaluated based on Census Block Groups and/or Transportation Analysis Zones (TAZ).
3. All documents shall be submitted in electronic format compatible with technology utilized by the City of San Antonio Department of Planning and Community Development (Re-writable files in Microsoft Office Publisher 2003, Adobe InDesign CS5, Microsoft Office Word 2003, and ArcMap 9.3).
4. Staff reserves the right to modify all documents.
5. City shall own all right, title and interest in all intellectual property delivered by the Consultant under this Agreement, including, without limitation, all text, drawings, graphs, tables, photographs, illustrations and other content in fulfillment of this Agreement and related documentation developed by the Consultant for the City (collectively, "Work Product"). All such Work Product shall be considered "Works Made for Hire" (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of City. Consultant hereby assigns to City for no additional consideration, all worldwide right, title, and interest that it may possess in such Work Product including, but not limited to, all intellectual property rights thereto and Consultant shall execute such further assurances evidencing such assignment as City may

require from time to time. Upon request, Consultant will take such steps as are reasonably necessary to enable City, at City's cost and expense, to carry out the intent of the above assignment and to record such assignment.

6. Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

7. All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \$200,000 as total compensation, to be paid to Consultant as follows:

Invoices shall be submitted monthly for work performed. Invoice shall be accompanied by progress report of accomplishments and work products within the period. Invoices shall not exceed \$40,000 for any given month, except that the final payment may exceed this amount. If progress is satisfactory within each invoice period, according to work plan, payment will be issued.

4.2 Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to Trish Wallace, City of San Antonio, Planning and Community Development Department, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Consultant and its subconsultants, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant’s expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

7.4.3 Failing to perform or failing to comply with any covenant herein required

7.4.4 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested

by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subconsultants pursuant to this Agreement.

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

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:
Trish Wallace
City of San Antonio
Planning and Community Development
Department
PO Box 839966
San Antonio, Texas 78283

If intended for Consultant, to:
Andrew M. Knudsten
Economic & Planning Systems, Inc.
2501 Ninth Street, Suite 200
Berkeley, CA 94710

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Planning and Community Development Department, which shall be clearly labeled “Comprehensive Plan Studies” in the Description of Operations block of the Certificate. The 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature 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 Planning and Community Development Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify 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 Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 A Consultant’s financial integrity is of interest to the City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Consultants c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per

b. Non-owned vehicles c. Hired Vehicles	occurrence
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

10.4 Consultant agrees to require, by written contract, that all subconsultants providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Consultant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subconsultant. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Trish Wallace
Planning and Community Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, 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;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

10.11 Consultant and any subconsultants are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

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

11.2 The provisions of this INDEMNITY 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subconsultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subconsultant under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subconsultants of Consultant. Consultant, its employees or its subconsultants shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subconsultants in the performance of this Agreement: Vickrey and Associates, Inc. . Any deviation from this subconsultant list, whether in the form of

deletions, additions or substitutions shall be approved by City of San Antonio City Council (“City Council”), as evidenced by passage of an ordinance, prior to the provision of any services by said subconsultant.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subconsultants with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subconsultant of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subconsultant, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subconsultant.

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

XIII. INDEPENDENT CONSULTANT

Consultant covenants and agrees that he or she is an independent consultant and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, consultants, subconsultants and consultants; that the doctrine of “respondeat superior” shall not apply as between City and Consultant, its officers, agents, employees, consultants, subconsultants and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subconsultants that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification or “Certified” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONSULTANT to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONSULTANT attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONSULTANT shall not be given credit for the participation of its S/M/WBE subconsultant or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONSULTANT and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories, that is no more than five years old at the time of its original certification as an ESBE or whose annual revenues and number of employees are no greater than 25% of the small business size standards for its Industry as established by the U.S. Small Business Administration, that is actively enrolled in the Mentor-Protégé Program for its Industry (once established by the City), and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm that is no more than five years old at the time of its original certification as an Emerging M/WBE, that is actively enrolled in the M/WBE or SBE Mentor-Protégé Program for its Industry (once established by the City), whose annual revenues and number of employees are no greater than 25% of the small business size standards for its Industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Evaluation Preference – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONSULTANTS or Respondents.

Good Faith Efforts – documentation of the CONSULTANT’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime CONSULTANT’s posting of a bond covering the work of SBE or M/WBE Subconsultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subconsultants.) The appropriate form and content of CONSULTANT’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more

Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONSULTANTS and/or Subconsultants and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime CONSULTANT – the vendor or CONSULTANT to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONSULTANT.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility

for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONSULTANT is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO

Manager is also responsible for enforcement of CONSULTANT and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

SubCONSULTANT – any vendor or CONSULTANT that is providing goods or services to a Prime CONSULTANT or CONSULTANT in furtherance of the Prime CONSULTANT’s performance under a contract or purchase order with the City. A copy of each binding agreement between the CONSULTANT and its subconsultants shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm’s beneficial participation in the CITY’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONSULTANT’s and/or S/M/WBE firm’s performance and payment under CITY contracts due to the CITY’s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

SubCONSULTANT/Supplier Utilization Plan – a binding part of this contract agreement which states the CONSULTANT’s commitment for the use of Joint Venture Partners and / or Subconsultants/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONSULTANT’s Joint Venture partners and Subconsultants/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subconsultant/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subconsultant/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONSULTANT acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and,

moreover, that such terms are part of CONSULTANT's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONSULTANT voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONSULTANT further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONSULTANT shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONSULTANT's utilization and payment of Subconsultants, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subconsultants with this term;
2. CONSULTANT shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONSULTANT or its Subconsultants or suppliers;
3. CONSULTANT shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subconsultants and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONSULTANT shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONSULTANT's Subconsultant / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONSULTANT to replace the Subconsultant / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subconsultant / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONSULTANT of work previously designated for performance by Subconsultant or supplier, substitutions of new Subconsultants,

terminations of previously designated Subconsultants, or reductions in the scope of work and value of work awarded to Subconsultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONSULTANT shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONSULTANT shall retain all records of its Subconsultant payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONSULTANT's Subconsultant / Supplier Utilization Plan, the CONSULTANT shall not be given credit for the participation of its S/M/WBE or HUBZone subconsultant(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONSULTANT and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONSULTANT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONSULTANT and each of its Subconsultants for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONSULTANT has represented to CITY which primary commodity codes each registered Subconsultant will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract. CONSULTANT hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

ESBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (c), this contract is being awarded pursuant to the Emerging SBE (ESBE) Prime Contract Program, and as such, CONSULTANT affirms that if it is presently certified as an ESBE, CONSULTANT agrees not to subcontract more than 49% of the contract value to a non-ESBE firm.

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONSULTANT affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONSULTANT agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONSULTANT represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONSULTANT shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subconsultants, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subconsultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONSULTANT shall incorporate this clause into each of its Subconsultant and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONSULTANT, CONSULTANT shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subconsultants, including HUBZone Subconsultants, to ensure that the CONSULTANT's reported subcontract participation is accurate. CONSULTANT shall pay its SubCONSULTANTS in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONSULTANT's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONSULTANT, and no new CITY contracts shall be

issued to the CONSULTANT until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONSULTANT acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XV. CONFLICT OF INTEREST

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with 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 subconsultant on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, 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. 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.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

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

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. [RESERVED]

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

XXVII. PROHIBITED CONTRIBUTIONS

27.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

27.2 Consultant acknowledges that the City has identified this Agreement as high profile.

27.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

CONSULTANT

Andrew M. Knudtsen

Economic & Planning Systems, Inc

(Signature)

(Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:

Assistant City Attorney