

AN ORDINANCE 2011-09-29-0807

AUTHORIZING A CONTRACT OF \$69,674.00 WITH CLARION ASSOCIATES TO PROVIDE PRESERVATION AND DESIGN CONSULTING SERVICES THROUGH THE CREATION OF HISTORIC DISTRICT DESIGN GUIDELINES FOR THE CITY OF SAN ANTONIO.

* * * * *

WHEREAS, the City of San Antonio (“City”) has twenty-seven (27) historic districts; six River Improvement Overlay (RIO) Districts, over 1,200 individually designated local landmarks and more than 2,000 recorded archaeological sites; and

WHEREAS, on August 20, 2009, the City of San Antonio adopted the Strategic Historic Preservation Plan, which recommended historic district design guidelines be adopted; and

WHEREAS, in an effort to enhance the City’s historic resources and further advance services to the public, the City has sought the services of a consultant to develop historic district design guidelines for the City’s historic districts; and

WHEREAS, the proposals received in response to a Request for Proposals for consulting services for the creation of historic district design guidelines were reviewed and interviewed by the evaluation committee; and

WHEREAS, the evaluation committee recommends the selection of Clarion Associates; **NOW THEREFORE:**

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

SECTION 1. Clarion Associates is hereby selected to provide consulting services for historic district design guidelines, as described in the attached contract, for a fee of \$69,674.00. The City Manager, her designee, and the Historic Preservation Officer are hereby authorized to execute the contract for said services, a copy of which is attached hereto and incorporated herein as Exhibit A.

SECTION 2. Funding in the amount of \$75,000.00 for this ordinance is available as part of the Fiscal Year 2011 Budget per the table below.

Amount	Cost Center	Internal Order	General Ledger	Fund
\$25,000.00	3401010001		5201040	11001000
\$50,000.00		131000001916	5201040	28036000
Total Amount: \$75,000.00				

SECTION 3. Payment not to exceed the budgeted amount is authorized to Clarion Associates and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

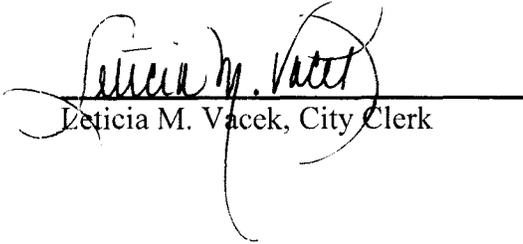
SECTION 5. This ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 29th day of September, 2011.



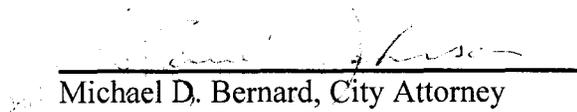
M A Y O R
Julián Castro

ATTEST:

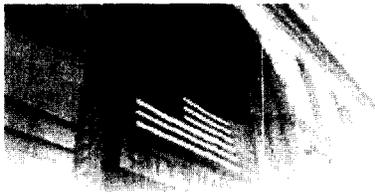


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

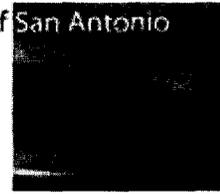


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 40

Name:	5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19A, 19B, 20B, 20C, 21, 22, 23, 25, 26A, 26B, 26C, 26D, 26E, 26F, 26G, 26H, 26I, 26J, 27A, 27B, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41A, 41B, 41C						
Date:	09/29/2011						
Time:	11:04:43 AM						
Vote Type:	Motion to Approve						
Description:	Authorization to execute a professional services contract with Clarion Associates to provide preservation and design consulting services through the creation of citywide Historic District Design Guidelines. [T.C. Broadnax , Assistant City Manager; Shanon Shea Peterson, Historic Preservation Officer, Office of Historic Preservation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

III. SCOPE OF SERVICES

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

Task 1: Preparatory Phase

1.1. Review Existing Plans and Regulations

Prior to traveling to San Antonio, Consultant will work with the Office of Historic Preservation to identify and assemble relevant background documents for review. The primary background materials are expected to include, at a minimum:

- The maps and existing guidelines for each locally designated historic district;
- The 2009 Strategic Historic Preservation Plan and other relevant adopted plans;
- The existing Unified Development Code and other relevant preservation standards;
- Historical background materials to assist in the development of the brief history of the city and the historic districts; and
- Other background materials identified by the Office of Historic Preservation.

1.2. Staff Workshop: Key Issues

- Consultant will conduct an on-site workshop with the Office of Historic Preservation to discuss the design guidelines project.

DELIVERABLES/SCHEDULE:

By November 11, 2011, Consultant will provide to City a final scope and schedule for the design guidelines, initial timelines for public or coordination meetings with stakeholders and interested groups

Task 2: Identify Issues and Draft the Design Guidelines

2.1. Character Analysis/Issue Identification

Immediately following the preparatory phase, Consultant shall conduct fieldwork in San Antonio to inventory key physical characteristics of the different historic districts to identify potential issues to be addressed by the design guidelines. Consultant will identify general design characteristics and photograph the districts. Consultant will also tour recent project sites with the Office of Historic Preservation to gain an understanding of key issues to be addressed by the design guidelines.

2.2. Stakeholder Preferences Questionnaire

Prior to the first stakeholder workshop, Consultant will develop for Historic Preservation Officer approval a brief questionnaire to gather feedback from various stakeholders regarding development preferences and key issues to be addressed by the design guidelines. Photographic examples of built developments from comparable historic districts in other communities (residential, nonresidential, and mixed-use) will be used to assess stakeholder preferences on the preferred design, scale, and character of new development. Where appropriate, participants will

be asked to answer the same question from two perspectives-first, the degree to which they feel the example provided is appropriate within San Antonio as a whole; and second, the degree to which they feel the example is appropriate within a specific planning area (e.g., downtown). The questionnaire will be produced in an on-line format that may be accessed from the city's website and a PDF version so that hard copies may be made.

2.3. Stakeholder Meetings and Interviews

Following the creation and distribution of the preferences questionnaire, Consultant will meet in San Antonio with representatives from various stakeholder groups identified by the City to present the project generally and to solicit group feedback and discussion on the ideas contained in the questionnaire. Groups will include, at a minimum, the Historic Design and Review Commission, representatives from a Historic District Council if available, and representative property owners and residents from the historic districts. The meetings will be designed to receive input both on specific design issues and also (if appropriate) on options for improving the design review procedures.

2.4. Public Workshop

On the same trip as the stakeholder meetings, Consultant will administer a public workshop in San Antonio to inform local officials and residents of the scope and purpose of the design guidelines and to solicit public comments and suggestions.

2.5. Draft Annotated Outline of New Guidelines

Following the workshops and meetings, Consultant will prepare a report for City review that presents:

- A general discussion of the types of design issues to be addressed in the new unified historic district design guidelines; and
- An annotated outline of the proposed new design guidelines that is organized by project type (residential, nonresidential, commercial, mixed-use) and topic (i.e., windows, roofs, doors, porches, exterior maintenance, materials, signage, etc.).
- The annotated outline shall also identify specific physical site and building features to be addressed (and in some cases possibly proposing specific thresholds or measurements for discussion purposes).

The report will be reviewed by City through the Historic Preservation Officer for approval. Should Historic Preservation Officer not approve, Consultant shall revise, as necessary, prior to presentation at the second stakeholder workshop.

2.6. Joint Stakeholder Workshop

Following distribution of the annotated outline, Consultant will administer a joint stakeholder workshop in San Antonio with representatives from stakeholder groups to present the report and to receive feedback. Consultant shall coordinate stakeholder group representation with the Office of Historic Preservation prior to the meeting being scheduled.

2.7. Develop Draft Design Guidelines

Consultant will translate feedback received from the meetings and the Office of Historic Preservation on the annotated outline into a complete, illustrated draft of the proposed historic district design guidelines. Such guidelines will address, at a minimum, building scale, massing, building materials, exterior maintenance, roofing, windows, doors, porches, setbacks, new infill construction, parking location and design, pedestrian circulation, building design and orientation, articulation of building and roof forms, fences and walls, and other related issues identified by the Office of Historic Preservation. They will be highly graphic and oriented around numerous photographs and illustrations that effectively convey the intent of the guidelines. Technical labeled drawings will also be included (i.e. A drawing with window parts clearly labeled). Per the RFP, in addition to the guidelines themselves, the document will also include: A brief history of San Antonio and the historic districts; an explanation of the historic preservation ordinance and the design review/COA process; a discussion of the architectural styles found in the city's historic districts; and an illustrated glossary. The draft design guidelines shall provide easy identification of sections, and such sections shall be easily referenced when utilized by the reader (i.e., Section 2b (Residential windows), Section 19.4 (Commercial roofs, etc.).

CONSULTANT SHALL:

- Provide character analysis and a photo inventory
- Develop Stakeholder Preferences Questionnaire (draft and final)
- Provide questionnaire link to City for distribution
- Monitor questionnaire activity and report back to City periodically with updates on the status of participation and general analysis of answers
- Summarize results of Stakeholder Preferences Questionnaire
- Prepare for and facilitate Stakeholder meetings and interviews and Public Workshop
- Prepare annotated outline of design guidelines
- Prepare for and facilitate Joint Stakeholder Workshop
- Prepare draft design guidelines based on stakeholder feedback from workshops

CITY SHALL:

- Identify specific areas where distinct design guidelines will be needed
- Provide copies of recent development proposals (as appropriate and when available) to guide discussions on challenges with existing regulations
- Schedule the time and place for stakeholder workshops
- Identify and approve which images of local development may be incorporated for use in Stakeholder Preferences Questionnaire (as relevant to supplement examples provided by consultant)
- Review draft Stakeholder Preferences Questionnaire and provide feedback to consultant
- Establish project information and questionnaire link on the Office of Historic

- Preservation website, and possibly the City website.
- Review results of Stakeholder Preferences Questionnaire
- Provide one set of consolidated written comments on preliminary draft of policy report/annotated outline
- Provide one set of consolidated written comments on preliminary draft of design guidelines
- Arrange for meeting locations and provide notification for meetings to public and/or stakeholders
- Printing/distribution of display materials

DELIVERABLES/SCHEDULE:

Consultant shall provide to City for approval a draft and final version of Stakeholder Preferences Questionnaire; photo inventory; display materials; and a summary of Stakeholder Preferences Questionnaire results. Consultant shall also provide an annotated outline of design guidelines and a draft of the design guidelines. All deliverables and meetings under Task 2 shall be provided and/or have occurred within eight months of the signing of this contract.

Task 3: Finalization and Adoption

3.1. Stakeholder/Public Workshop and Open House

A combination workshop and open house will be held to present key concepts and gather feedback on the draft design guidelines from stakeholders and the general public. City shall choose the time and coordinate a location for the meeting. City shall also be responsible for advertising the meeting to stakeholders and the public. The open house will allow the community to comment on specific aspects of the draft design guidelines prior to creation of an adoption draft. Feedback received will be summarized and presented to City in an approved format for City direction on preparation of the adoption draft.

3.2. Adoption Draft of Design Guidelines

Consultant will prepare a final draft of the design standards for City approval that incorporates feedback and comments from city officials and from the public workshop and open house to carry forward into the adoption process. The adoption draft shall be formatted in such a way that each topic area could be reproduced individually as a standalone document. Such draft shall be provided to City (in English and Spanish) at least three weeks prior to any adoption meeting date of the City. Following the adoption hearing, a final set of the design guidelines will be produced and provided to City for approval within two weeks. Consultant shall make any changes based on City direction from the adoption hearing prior to submitting the final set to City. The final approved set of design guidelines shall be provided to City no later than 12 months after the signing of this contract, unless agreed to in writing by both the City and Consultant.

CONSULTANT SHALL:

- Prepare materials for and administer Stakeholder Public Workshop and Open House
- Prepare adoption draft of the design guidelines

CITY SHALL:

- Schedule and advertise the Public Open House
- Provide for a meeting space
- Distribute materials to meeting participants

DELIVERABLES/SCHEDULE:

Consultant will prepare a final draft of the design standards for City approval that incorporates feedback and comments from city officials and from the public workshop and open house to carry forward into the adoption process. After City approval of the draft, the final approved set of design guidelines shall be provided to City in both English and Spanish no later than 12 months after the signing of this contract, unless agreed to in writing by both the City and Consultant. . The Consultant will provide one complete set of design guidelines in hard copy, an electronic PDF version formatted for inclusion on the website and an electronic version that is fully editable by the City for its use.

All work performed by Consultant hereunder shall be performed to the satisfaction of the Historic Preservation Officer of City of San Antonio. The determination made by Historic Preservation Officer 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 the Historic Preservation Officer. 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 Historic Preservation Officer; 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 Historic Preservation Officer, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Sixty Nine Thousand Six Hundred Seventy Four dollars (\$69,674) dollars as total compensation, to be paid to Consultant as follows:

Upon completion and approval of Task I	\$6,467.40
Upon completion and approval of Task 2.6	\$22,135.90
Upon completion and approval of Task 2.7	\$16,168.50

Upon completion and approval of Task 3.1	\$6,467.40
Upon completion and approval of Task 3.2 (Adoption of and approval of Final Design Guidelines)	\$18,434.80

Total: **\$69,674.00**

4.2 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.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Historic Preservation Officer. Payment will be made to Consultant following written approval of the final work products and services by Historic Preservation Officer. 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. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.1 Consultant understands that funds provided to it pursuant to this Agreement are funds which have been made available to City by the federal government under the Act, the Community Development Act, the Community Development Act of 1992, as previously defined herein (collectively, the "Acts") and with other specific assurances made and executed by City. Consultant, therefore, assures and certifies that it will comply with the requirements of the Acts, and with all regulations promulgated thereunder as codified as Title 24 of the Code of Federal Regulations. Consultant understands, however, that the foregoing Acts and regulations in no way are meant to constitute a complete compilation of all duties imposed upon Consultant by law or administrative ruling, or to narrow the standards which Consultant must follow. Accordingly, Consultant understands that if the regulations and issuances promulgated pursuant to the Acts are amended or revised, it shall comply with them or otherwise immediately notify City pursuant to the provisions of Article XXXVIII of this Agreement.

5.2 Consultant understands that summaries of certain compliance requirements mandated by applicable laws or regulations are contained in City's Federal Compliance Manual, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "A," and City's CDBG and HOME Housing Program Policies, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "B," and that Consultant must at all times remain in compliance therewith; Consultant further understands that said summaries are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon Consultant by law or administrative ruling, or to narrow the standards which Consultant must follow.

5.3 Consultant assures that all contractors and subcontractors receiving funds in connection with this Project are familiar with, and shall comply with, any and all applicable rules and regulations as contained in City's Federal Compliance Manual and City's CDBG and HOME Housing Program Policies and that a copy of said Federal Compliance Manual and City's CDBG and HOME Housing Program Policies will be included as part of every contract awarded in connection with this Project.

5.4 Consultant shall observe and comply with all city, state and federal laws, regulations, ordinances, and codes affecting Consultant's operations pursuant to this Agreement.

VI. LEGAL AUTHORITY

6.1 Consultant represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

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

6.3 In the event that a dispute arises as to the legal authority to enter into this Agreement of either the Consultant or the person signing on behalf of Consultant, City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement. Should City suspend or permanently terminate this Agreement pursuant to this paragraph, however, Consultant shall be liable to City for any money it has received from City for performance of any of the provisions hereof.

VII. MAINTENANCE OF EFFORT

7.1 Consultant agrees that the funds and resources provided to it under the terms of this Agreement shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services, or other benefits which would have been available to, or provided through Consultant had this Agreement not been executed.

VIII. OWNERSHIP OF DOCUMENTS

8.1 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. However, Consultant shall have the right to utilize such documents in the course of its marketing or professional presentations.

8.2 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.

8.3 Consultant warrants and agrees that no writings, documents, photographs or other information in whatsoever form provided to City shall be subject to a copyright or other legal ownership suit of any type, either by consultant or any other third party. Consultant shall ensure prior to providing any writings, documents, photographs or other information in whatsoever form that the City has the right to own and use all such writings, documents and information as City desires, without restriction.

IX. RECORDS RETENTION

9.1 Consultant and its subcontractors, 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 time 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.

9.2 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 said documents to City prior to or at the conclusion of said retention.

9.3 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.

X. TERMINATION

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

10.2 Termination Without Cause. This Agreement may be terminated by either party upon thirty (30) days written notice, which notice shall be provided in accordance with Article VIII Notice.

10.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XI. 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

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

10.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 10.4 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 fifteen (15) calendar days after receipt of the written notice, in accordance with Article XI. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-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.

10.4.1 Failure to comply with the terms and conditions stated in XV. ASSIGNMENT AND SUBCONTRACTING or XXVI. SBEDA

10.4.2 Bankruptcy or selling substantially all of company's assets

10.4.3 Failing to perform or failing to comply with any covenant herein required.

10.4.4 Performing unsatisfactorily

10.5 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.

10.6 Regardless of how this Agreement is terminated, Consultant shall affect 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 IX. 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.

10.7 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.

11.8 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 subcontractors pursuant to this Agreement.

11.9 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.

XI. 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:

City of San Antonio
Attn: Historic Preservation Officer
Office of Historic Preservation
P.O. Box 839966 San Antonio, TX 78283 -3966

If intended for Consultant, to:

Matthew Goebel
Clarion Associates
621 17th Street, Suite 2250
Denver, Colorado 80293
(303) 830-2890
(303) 860-1809 fax
www.clarionassociates.com

XII. DELIVERABLES

12.1 Consultant understands and acknowledges that:

a) Five hardbound copies of a draft Historic District Design Guidelines shall be delivered in report form for review within eight months of the contract effective date to the Historic Preservation Officer.

b) The final Historic District Design Guidelines shall be delivered in booklet form using standard size sheets including selected text, photographs, graphics, tables, charts, and renderings (ten hardbound copies and one unbound copy to facilitate reproduction).

c) Consultant shall deliver the final Historic District Design Guidelines in electronic formats acceptable to the City, which may be posted to the Internet (PDF) and which allows the document to be modified (Word).

d) Rights to all data, work products, etc. revert to the City of San Antonio upon completion and acceptance of the draft and/or final Historic District Design Guidelines.

e) Consultant shall provide all associated reference tables, listings, maps and illustrations with the final Historic District Design Guidelines.

12.2 Consultant and City agree that all other deliverables shall be as stated in Article III, Scope of Services.

XIII. INSURANCE

13.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Office of Historic Preservation, which shall be clearly labeled "Historic District Design Guidelines Contract" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The 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 Office of Historic Preservation. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

13.2 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 whereupon City may incur increased risk.

13.3 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:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory \$500,000/\$500,000/\$500,000
2. Employers' Liability	
3. Broad form Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence;
a. Premises/Operations	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
* b. Independent Contractors	
c. Products/Completed Operations	
d. Personal Injury	
e. Contractual Liability	
f. Damage to property rented by you	f. \$100,000
4. Business Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
a. Owned/leased vehicles	
b. Non-owned vehicles	
c. Hired Vehicles	
5. Professional Liability (Claims-made basis)	\$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.
To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	

13.4 Consultant agrees to require, by written contract, that all subcontractors 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. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. 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.

13.5 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: Historic Preservation Officer
Office of Historic Preservation
P.O. Box 839966
San Antonio, Texas 78283-3966

13.6 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 insured 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 and employers' 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.

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

13.8 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.

13.9 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 subcontractors' performance of the work covered under this Agreement.

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

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

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

XIV. INDEMNIFICATION

14.1 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.

14.2 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.

14.3 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.

14.4 Employee Litigation -In any and all claims against any party indemnified hereunder by any employee of Consultant, any sub Consultant, 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.

XV. ASSIGNMENT AND SUBCONTRACTING

15.1 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 subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

15.2 It is City's understanding and this Agreement is made in reliance thereon that Consultant will utilize one subcontractor in the performance of this Agreement: Hardy-Heck-Moore, Inc. Any deviation from this shall be approved by City. Notwithstanding the foregoing, changes may be made to Consultant's SBEDA Plan with the written approval of Historic Preservation Officer and City's SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

15.3 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 subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council;

15.4 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 City. 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 subcontractor.

15.5 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 X. 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.

XVI. 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 respondent 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 ventures 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.

XVII. SPECIAL CONDITIONS

Consultant acknowledges, understands, and agrees to comply with the following federal regulations as promulgated in Section 3 clause of the Housing and Urban Development Act of 1968, as amended:

(A) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170(l)(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low income persons, particularly persons who are recipients of HUD assistance for housing.

(B) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(C) The Consultant agrees to send to each labor organization or representative of workers with which the Consultant has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Consultant's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

(D) The Consultant agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. 135. The Consultant will not subcontract with any subcontractor where the Consultant has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. 135.

(E) The Consultant will certify that any vacant employment positions, including training positions, that are filled (1) after the Consultant is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. 135 require employment opportunities to be directed, were not filled to circumvent the Consultant's obligations under 24 C.F.R. 135.

(F) Noncompliance with HUD's regulations in 24 C.F.R. 135 may result in sanctions, termination of this contract for default, and debarment or suspension from further HUD-assisted contracts.

(G) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this CONTRACT that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

XVIII. CONFLICT OF INTEREST

18.1 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.

18.2 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.

XIX. MONITORING AND EVALUATION

19.1 City shall perform on-site monitoring of Consultant's performance pursuant to the terms of this Agreement.

19.2 Consultant agrees that City may carry out monitoring and evaluation activities so as to ensure compliance by Consultant with this Agreement, with the Community Development Acts of 1974 and 1992, with the program assurances and certifications executed by City (if applicable), and with all other laws, regulations and ordinances related to the performance hereof.

19.3 Consultant agrees to cooperate fully with City in the development, implementation, and maintenance of record-keeping systems and to provide City with any data determined by City to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities.

19.4 Consultant agrees that it will cooperate with City in such a way so as not to obstruct or delay City in its monitoring of Consultant's performance and that it will designate one of its staff to coordinate the monitoring process as requested by City staff.

19.5 After each official monitoring visit, City shall provide Consultant with a written report of monitoring findings.

19.6 Copies of any fiscal, management, or audit reports by any of Consultant's funding or regulatory bodies shall be submitted to City within five (5) working days of receipt thereof by Consultant.

XX. 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. The Historic Preservation Officer shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. 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 anyone 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.

XXV. LAW APPLICABLE

25.1 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.

25.2 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.

XXVI. SBEDA

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's International and Economic Development Department (IEDD) 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.)

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 CONTRACTOR to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR 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 CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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 CONTRACTORS or Respondents.

Good Faith Efforts - documentation of the CONTRACTOR'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 Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; 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 Subcontractors.) The appropriate form and content of CONTRACTOR'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 HUB Zone; 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 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 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 CONTRACTORS and/or Subcontractors 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 Contractor -the vendor or contractor 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 CONTRACTOR.

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 (SAMSAs), 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, CONTRACTOR 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.

San Antonio Metropolitan Statistical Area (SAMSAs) -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 (SAM SA), 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 International and Economic Development Department (IEDD) 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 IEDD 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 contractor 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.

Subcontractor -any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors 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 CONTRACTOR'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.

Subcontractor/Supplier Utilization Plan - a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/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 CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the IEDD 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 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 CONTRACTOR 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 CONTRACTOR'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. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, 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 Subcontractors with this term;

2. CONTRACTOR 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 CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR 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 Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR 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. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract. Of, 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.

D. SBEDA Program Compliance -Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract. CONTRACTOR 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:

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

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this agreement, the CONTRACTOR 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, CONTRACTOR 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 Subcontractors, 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 Subcontractors, 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. CONTRACTOR'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. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors 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 CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR 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).

XXVII. 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.

XXVIII. 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.

XXIX. 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.

EXECUTED and AGREED to as of the dates indicated below.

City of San Antonio

(Signature)

Printed Name: _____

Title: _____

Date: _____

ATTEST:

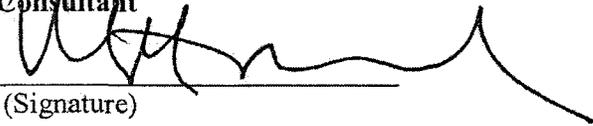
Leticia M. Vacek
City Clerk

Date

Approved as to Form:

City Attorney

Consultant



(Signature)

Printed Name: Max Goebel

Title: Vice President

Date: 9-26-11