TM [3/3/16]
Item No. 21.

AN ORDINANCE 2016-03-03-0170

AUTHORIZING THE EXECUTION OF THREE PROFESSIONAL SERVICES AGREEMENTS WITH PROVIDENCE COMMERCIAL REAL ESTATE SERVICES, INC., PELOTON REAL ESTATE PARTNERS SAN ANTONIO, LLC AND CBRE INC. TO PROVIDE REAL ESTATE BROKERAGE SERVICES ON AS NEEDED BASIS IN CONNECTION WITH ACQUISITION, DISPOSITION OR LEASING OF REAL ESTATE FOR A TERM OF TWO YEARS WITH THE OPTION TO RENEW FOR TWO ADDITIONAL ONE YEAR EXTENSIONS.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City of San Antonio a contract with Providence Commercial Real Estate Services, Inc., Peloton Real Estate Partners San Antonio, LLC, and CBRE Inc. in substantially the form attached as Attachment I, which is incorporated for all purposes. The City Manager and her designee, severally, should consummate the transactions contemplated by the attached instrument according to its terms and take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

SECTION 2. The amounts not to exceed $300,000.00 per year will be encumbered upon issuance of a purchase order, and payment is authorized to various vendors. All expenditures will be in accordance with the Fiscal Year 2016 and subsequent budgets that fall within the term period of this contract approved by City Council.

SECTION 3. 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 4. This ordinance is effective immediately upon receipt of eight affirmative votes; otherwise, it is effective 10 days after passage.

PASSED AND APPROVED this 3rd day of March, 2016.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**21 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 14, 16, 18, 19, 20, 21)**
Date:	03/03/2016
Time:	09:34:57 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of three professional services agreements with Providence Commercial Real Estate Services, Inc., Peloton Real Estate Partners San Antonio, LLC and CBRE Inc. to provide real estate brokerage services on as needed basis in connection with acquisition, disposition or leasing of real estate for a term of two years with the option to renew for two additional one year extensions. [Lori Houston, Assistant City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x			x	
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

ATTACHMENT 1

ATTACHMENT I

On-Call Commercial Real Estate Brokerage Services Agreement

NAME OF FIRM

This On-Call Commercial Real Estate Brokerage Services Agreement is undertaken as of the Effective Date herein between the City of San Antonio and the Broker designated below.

Authorizing Ordinance:

Effective Date: The later of (A) the effective date of the Authorizing Ordinance or (B) the date of later of the signatures on behalf of the two parties to this Agreement.

Broker:

Broker's Address:

Term: 2 years

Renewal: City may renew this Agreement for up to two (2) additional 1-year terms.

Table of Contents

1. Definitions. 3
2. Scope of Services. 4
3. Compensation 5
5. Time and Period of Service 10
6. Record Retention. 11
7. Ownership of Documents. 11
8. Events of Default. 12
9. Remedies for Default. 12
10. Other Termination. 12
11. Post-Termination Procedures. 13
12. Insurance. 14
13. Indemnity. 14
14. Assignment and Subcontracting. 15
15. Independent Broker. 15
16. Prohibited Interests in Contracts. 16
17. Licenses and Certifications. 16
18. Agency Relationship. 17
19. Compliance. 17
20. Non-Discrimination Policy 17
21. Authority to Bind. 18
22. Appropriations. 18
23. Dispute Resolution. 18
24. Miscellaneous. 19
25. Public Information. 21
EXHIBIT A 22
EXHIBIT B 25
INSURANCE REQUIREMENTS 25
EXHIBIT C 29
EXHIBIT D 30
SBEDA ORDINANCE COMPLIANCE PROVISIONS 30

1. Definitions.

1.01. "Broker" means **CRBE, Inc.**

1.02. "CCMS" means City's Contract Management System, whereby payments made by Broker to Consultants, Sub-Consultants, Contractors and/or Subcontractors, said payments confirmed by Consultants, Sub-Consultants, Contractors and/or Subcontractors pursuant to this Project and issued Task Orders, are entered by Broker and its Consultants, Sub-Consultants, Contractors and Subcontractors and are monitored by City for compliance.

1.03. "City" means the City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or his/her designee.

1.04. "Compensation" means amounts paid to Broker for services rendered pursuant to under this Agreement.

1.04. "Director" means the director of the City of San Antonio (hereafter referred to as "City") Transportation & Capital Improvements Department (hereafter referred to as "TCI").

1.05. "Finalized Task Order" means a written agreement, authorized by both parties in the City's Portal system and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Task Order as further defined herein.

1.06. "Party" means City or Broker individually.

1.07. "Parties" means City and Broker collectively.

1.08. "PRIME*Link*", as more fully defined in **Section 4.06** herein, means City's internet-based project management software for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Broker.

1.07 "Project" means any Task Order assigned to Broker by City under this Agreement.

1.08 "Project Property" means property to which an issued Task Order, pursuant to this Agreement, relates.

1.9 "SAMSA" means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven

(7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.

1.10 "Services" means those services described in the Scope of Services, as set out in an issued Task Order.

1.11 "Task Order" means a Work order issued to Broker setting forth the agreed to Scope of Services/Work, pricing and associated terms for an individual Project.

1.12 Scope of Services/Work, pricing and associated terms for an individual Project.

1.13 "Work" means the services required by the issued Task Order, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Broker or any Sub-Consultant, material suppliers or any other entities for which Broker is responsible to fulfill Broker's Task Order obligations.

2. Scope of Services.

2.01. Broker shall provide the services defined on **Exhibit A**, attached hereto and incorporated herein by reference. All services by Broker under this Agreement are as-needed by City, unless City otherwise directs in writing with respect to a specific class of services.

2.02. City may assign Work (hereafter referred to as "Projects" or "Task Orders") to Broker. For each Project or Task Order assigned to Broker under this Agreement, City and Broker shall establish agreed upon Project performance measures or Project performance goal(s).

2.03. Broker shall work closely with Director and appropriate City officials and shall perform all tasks related to Projects to timely fulfill Project goals.

2.04. Broker shall cooperate with City and deliver to City, in a form satisfactory to City, all sales Agreements, lease Agreements, data reports (as requested) and documents arising out of Broker's services.

2.05. In fulfilling its responsibilities under this Agreement:

2.05.01. Broker is prohibited from and shall not purport to bind City to any sale, purchase or lease Agreement. No Agreement binds the City unless formally approved by the San Antonio City Council, as evidenced by passage of an ordinance. Further, Broker may not execute any documents in the name of or on behalf of City.

2.05.02. Broker shall not represent to any third party it has authority to sign for or in any way bind City to any legal relationship.

2.05.03. Broker may, at Broker's sole cost and expense, advertise Project Property, place for-sale or for-lease signs on Project Property, prepare comparative market analyses, disseminate information about Project Property and/or authorize other Brokers, salespersons, inspectors, appraisers and repair personnel to enter Project Property, as previously approved in writing and directed by City. Broker shall not use any advertising copy not previously approved by City in writing.

3. Compensation

3.01 Broker shall submit a Proposed Service Plan for each Project or Task Order City requests to be performed under this Agreement. City either will approve or disapprove each Proposed Service Plan. The City's approval shall be evidenced by a finalized Task Order executed by both parties in City's internet-based project management system (hereafter referred to as "PRIME*Link*" and more fully defined in Section 4.06 herein). Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into PRIME*Link*. Each finalized Task Order, as entered into PRIME*Link*, shall become a part of this Agreement.

3.01.01. Broker understands and agrees City may have entered into multiple agreements with other Brokers and City has the authority to assign Work/Task Orders at its sole discretion.

3.01.02. Broker understands and agrees City makes no minimum guarantees with regard to the amount of services, if any, Broker may be extended under this Agreement.

3.02. Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the not to exceed pre-priced tasks and or hourly rates included in **Exhibit C** hereto.

3.02.01 City shall pay Broker for services under this Agreement according to the compensation requirements of **Exhibit C**, attached hereto and incorporated herein by reference.

3.02.02. Except as provided otherwise by this Agreement or in writing by City, Broker shall bear all costs and expenses incurred by Broker under this Agreement including, but not limited to, labor, supervision of work, report reproduction, typing, travel, insurance, communication, advertising, computer access, materials, supplies, subcontractor costs, postage, telephone, stationery, rent, and any and all other costs and expenses necessary to complete Projects.

3.02.03. Broker compensation shall be as follows:

3.02.03.01. **Land Sales (whether or not improved)**: Commissions are due at the time of sale on the condition of closing, and such disbursement shall be made through the title company.

3.02.03.02. **New Lease**: One-half the Commission at the time the lease Agreement is signed by all parties and all contingencies to the lease are fulfilled, including approval by City Ordinance and appropriation of funds by City, as necessary. The second half of the Commission shall be paid at the commencement of the lease term.

3.02.03.03. **Lease Renewal**: No Commissions are due Broker unless Broker is an active participant in the renewal process, at the request of and as solely determined by City. If City determines Broker was an active participant in such renewal process, then the Commission is due on commencement of the renewal term.

3.03. Broker may share Commissions as allowed by law, but City shall not pay any Commission additional to that required by this Agreement.

3.04. Unless otherwise agreed to by City in writing, City shall be liable for Broker Commissions only when City is either:

(A) the seller of real property being sold; or

(B) the landlord under a lease Agreement. In those transactions in which City is the buyer or tenant and therefore is not responsible for payment of the Commission, Broker may look to and be paid by the other parties involved in a transaction.

3.05. This Agreement does not provide Broker with exclusive rights to provide brokerage services to City. City reserves the right to perform such services itself or to utilize other brokers.

3.06. Expenditures for services are subject to available funding and City Council authorization of commissions at the time transactions incurring a fee are presented for consideration. Fees and Commissions for the various types of transactions which may occur under this contract are fixed with a cap of $300,000 annually, and a schedule of same is attached. In addition, City may assign Projects requiring compensation to Broker

through an hourly fee in lieu of a Commission. The only Projects to which Broker shall be entitled to an hourly fee in lieu of a Commission are those identified in advance in writing by City and agreed upon by Broker. For a Project to qualify for hourly billing, the Parties hereto shall agree in advance in writing on the scope, fees and billing frequency, subject to approval of the Director and City Council, if City Council approval is required. Under no circumstances, however, may Broker's hourly fee exceed **One Hundred Fifty Dollars and NO/100 ($150.00)** per hour.

4. Method of Payment

4.01. Payments to Broker shall be in the amount shown on the invoices, consistent with the Task Order and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are judged unsatisfactory and which previously have not been approved by the Director. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

4.01.01. Payment solely may be made based on the units of services completed and approved by City and the associated unit price for such service, as may be described in Broker's proposal/fee schedule (as shown in **Exhibit C** hereto) and the approved Task Order.

4.01.02 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Broker entering itemized invoices, with required back-up and reference to the individual Task Order, in PRIME*Link*. Entered invoices shall indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.

4.02. Broker shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others, in connection with a Project and the performance of the Work, and shall, if requested, provide City with evidence of such payment. Broker's failure to make payments within such ten-day period shall constitute a material breach of this Agreement, unless Broker is able to demonstrate to City a bona fide dispute associated with an unpaid Consultant, Sub-Consultant, Contractor or Subcontract and the provided service. Broker shall include a provision in each of its Consultant, Sub-Consultant, Contractor and Sub-Contractor agreements imposing the same payment obligations on Consultant, Sub-Consultants, Contractor and Subcontractor as are applicable to Broker hereunder and, if City so requests, Broker shall provide copies of such payments made to Consultant, Sub-Consultants, Contractors and Subcontractors to City. If Broker fails to make payment promptly to a Consultant, Sub-Consultant, Contractor and/or Subcontractor for Services for which City has made

payment to Broker, City shall be entitled to withhold payment to Broker to the extent necessary to protect City.

4.03. Broker warrants title to all Services covered by an Application for Payment and such warranty shall pass to City no later than the time of payment by City. Broker further warrants, upon submittal of an Application for payment, that all Services for which Applications for payment previously have been issued and payments received from City shall, to the best of Broker's knowledge, information and belief, be free and clear of any and all liens, claims, security interests or encumbranceS. Broker shall indemnify and hold City harmless from any liens, claims, security interests or encumbrances filed by anyone claiming by, through or under the items covered by payments made by City to Broker.

4.04. Broker may submit a request for Partial Compensation, prior to a Task Order's completion. A request for Partial Compensation shall be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report, and approved by the Director and at City's sole discretion. Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each service/Project, as may be described in fee schedule and/or hourly rates included in **Exhibit C** hereto.

4.05. Task Order Close Out and Final Payment:

4.05.01. Broker's final billing shall indicate on its face: "Final Bill - No Additional Compensation is Due to Broker".

4.05.02. City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Broker is responsible due to:

4.05.02.01. delays in the performance of Broker's Work;

4.05.02.02. third-party claims filed or reasonable evidence received indicating a probable filing of such claims, unless security acceptable to City is provided by Broker;

4.05.02.03. failure of Broker to make payments properly to Sub-Consultants, suppliers and/or vendors for supplied services, labor, materials or equipment;

4.05.02.04. reasonable evidence Broker's Work cannot be completed for the unpaid balance amount under an assigned Task Order and this Agreement;

4.05.02.05. damage to City; or

4.05.02.06. persistent failure by Broker to carry out the performance of its services in accordance with this Agreement.

4.05.03. When the above reasons for withholding are removed or remedied by Broker, compensation of the amount withheld shall be made by City within a reasonable time. City shall not be deemed in default by reason of withholding compensation to Broker, as provided for in this **Article III**.

4.05.03.01. In the event of any dispute(s) between the Parties hereto, regarding the amount properly compensable for any Phase, as final compensation or regarding any amount that may be withheld by City, Broker shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such claim. In the event Broker does not initiate and follow the claim procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Broker.

4.05.03.02. City shall make final compensation of all sums due Broker not later than thirty (30) days after Broker's execution and delivery of a mathematically correct and accepted final Pay Application.

4.05.03.03. Acceptance of final compensation by Broker shall constitute a waiver of all claims except those previously made in writing and identified by Broker as unsettled at the time of Broker's submittal of its final application for compensation.

4.05.03.04. Broker agrees to maintain adequate books, payrolls and records in forms deemed satisfactory to City in connection with any and all Services performed hereunder. Broker agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services, unless a dispute regarding the Project or Broker's Work is ongoing. If any dispute exists, upon notice from City, Broker shall retain its books, payrolls and records

for more than four (4) years after completion of all Services performed herein and for as long after said four (4) years as City may request. At all reasonable times, Broker shall provide access to City and City's duly authorized representatives all personnel of Broker, as well as all books, payrolls and records of Broker, and City shall have the right to audit same.

4.06. **Internet-based Project Management Systems**. City shall administer its services through an Internet-Based Management System (hereafter referred to as "PRIME*Link*"). Broker shall conduct its communication with City through PRIME*Link* and Broker shall perform all project-related functions utilizing PRIME*Link*. Communications shall includes correspondences, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and any other administrative activities. City shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all necessary Project Team Members. All of Broker's invoices shall be submitted through PRIME*Link*.

5. Time and Period of Service

5.01. The term of this Agreement shall commence upon its approval by the San Antonio City Council and upon the execution by both parties and shall remain in force for the period of two (2) years, herein referred to as the "Initial Term".

5.02. As the enabling Ordinance provides, City shall retain an option to extend this Agreement for two (2) additional one-year periods, hereafter referred to as the "Extension Period(s)". The Director shall have the authority to exercise such options at his/her discretion.

5.03. Time is of the essence of this Agreement. Broker shall perform and complete its obligations for the various Tasks of services under **Article II** Scope of Services herein in a prompt and continuous manner so as to not delay the work for a Project in accordance with the schedules approved by City. If, upon review of a Task Order, corrections, modifications, alterations and/or additions are required of Broker for providing its services, those items shall be completed by Broker before that Task Order is approved.

5.04. Broker shall not proceed with the next appropriate Task Order without a written authorization from City. City may elect to discontinue Broker's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City retains the right to make adjustments to the scope of Broker's Task Order obligations at any time to achieve the required services.

5.05. Broker shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Broker's reasonable control. Within twenty one (21) days from the occurrence of any such event, for which time for performance by Broker shall significantly be extended under this **Section 5.05**, Broker shall give written notice thereof to City stating the reason for such time extension and the actual or estimated time for completion thereof. If City determines Broker is responsible for Broker's need for an extension of time, City shall have the right to make a Claim as provided in this Agreement.

5.06. This Agreement with Broker shall remain in force for a period of time City determines reasonably may be required for the construction services and the completion of a Project, including any extra work and any required extensions thereto, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

6. Record Retention.

6.01. Broker accurately and completely shall maintain all documents, papers and records, whether paper, digital or otherwise, used or generated in the course of performing this Agreement (hereafter referred to as "Documents"). Documents specifically include all survey-related documents. Broker shall make the Documents available to City at Broker's offices during normal City business hours as often as City may deem necessary throughout the period of performance and the Retention Period of this Agreement. City may audit, inspect, examine and make excerpts and/or copies of the Documents.

6.02. Broker shall retain all Documents for five (5) years after expiration of the term of this Agreement, including any renewal terms exercised (hereafter referred to as "the Retention Period"). If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning the Documents or the services provided by Broker hereunder, Broker shall retain the records until resolution of the litigation or other questions. City may require Broker to deliver the Documents to City before or at the end of the Retention Period.

6.03. Except in the ordinary course of business, Broker shall not reveal any Documents to any third party, except under legal process. In case of legal process, Broker shall notify City immediately, so City has the opportunity to assert any proprietary or other privileged interest it may have in the Documents.

6.04. Broker shall impose on its Consultants, Sub-Consultants, Contractors and Subcontractors, if any, all Record Retention obligations of this Agreement.

7. Ownership of Documents.

All Documents are the exclusive property of City. Broker has no copyright or other proprietary claim the Documents. As exclusive owner, City maintains the right to use all Documents as it desires, without restriction.

8. Events of Default.

The following shall be Events of Default by Broker, for which Broker has the notice cure rights set forth in **Section 9. Remedies for Default** herein:

(A) Failure to comply with City's Small Business Economic Development Advocacy (hereafter referred to as "SBEDA") Ordinance Compliance and Provisions outlined in this Agreement, as solely determined by City.

(B) Bankruptcy of Broker or of one or more of Broker's three highest-paid employees.

(C) Failure to perform any obligation of Broker under this Agreement.

(D) Unsatisfactory performance, as solely determined by City.

9. Remedies for Default.

9.01. If Broker commits an event of default, as outlined in **Section 8. Events of Default** herein, City may deliver written notice specifying the default. In such case, Broker has fifteen (15) calendar days to cure the cited default. If Broker fails timely to cure the cited default, City may, without further notice, terminate this Agreement in whole or in part, as City deems appropriate, and contract with another broker to complete the work required in this Agreement. City also may offset the cost of securing alternative broker services, including the cost of any solicitation, against Broker's future or unpaid invoice(s) for compensation under this Agreement.

9.02. City's termination of this Agreement is not an election of remedies. A termination of this Agreement does not limit City's right to seek damages from or otherwise pursue Broker for any default. All remedies are cumulative.

10. Other Termination.

10.01. City may terminate this Agreement without Broker being given an opportunity to cure if Broker sells, transfers, pledges, conveys or assigns this Agreement without prior written approval.

10.02. City may terminate this Agreement without Broker being given an opportunity to cure if Broker becomes subject to voluntary or involuntary proceedings under the Bankruptcy Code, enters into a composition with its creditor or sells substantially all of its assets.

10.03. City may terminate this Agreement without Broker being given an opportunity to cure if any state or federal law or regulation is enacted or promulgated prohibiting the performance by Broker of any of the duties herein or if any law is interpreted to prohibit such performance.

10.04. City may terminate this Agreement without cause, without Broker being given an opportunity to cure and without additional compensation to Broker by giving thirty (30) days written notice to Broker . Broker may terminate this Agreement without cause and without liability to City by giving ninety (90) days written notice to City. No such termination impairs Broker's rights to compensation under this Agreement due before the expiration of the 30-day notice period.

10.05. If any applicable law, rule or regulation is enacted or promulgated prohibiting performance of any of the duties of this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement automatically terminates as of the effective date of such prohibition.

11. Post-Termination Procedures.

11.01. Regardless how this Agreement is terminated, if requested by City, Broker shall transfer to City or to such person(s) or firm(s) as the City may designate, in an orderly manner at no additional cost to City, all completed or partially completed Documents. Broker shall complete the Documents transfer(s) within thirty (30) calendar days of City's written request. The Document transfer(s) shall be at Broker's sole cost and expense. City's payment to Broker is conditioned on Broker's timely compliance with City's Document transfer(s) request(s).

11.02. Upon receipt of notice to terminate this Agreement, Broker shall cease all operations of work being performed by Broker, its salespersons, cooperating brokers, cooperating brokers' salespersons or any of Broker's Consultants, Sub-Consultants, Contractors and/or Subcontractors and Broker shall cancel, withdraw or otherwise terminate any and all activities undertaken pursuant to this Agreement. City shall not be liable to Broker nor Broker's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of this Agreement's termination, unless otherwise provided herein.

11.03. If, at the time of this Agreement's termination, a fully executed sales Agreement or lease Agreement to consummate a transaction under this Agreement is pending, including already having been approved by Ordinance, then Broker's entitlement to compensation under this Agreement continues unless the lease or sale fails to close.

11.04. Within thirty (30) days after the expiration or termination of this Agreement, Broker may submit to City its claims, in detail, for the monies if feels it is owed by City for services performed and payable under this Agreement up through the date of expiration or termination of this Agreement. Failure by Broker to submit its claims within thirty (30) days negates City's liability for paying compensation to Broker and waives Broker's claims for unpaid compensation under this Agreement.

11.05. If, within ten (10) days after expiration or termination of this Agreement, Broker delivers written notice to City specifying the names of active prospects identified to a Project assigned to Broker and within ninety (90) days after the effective date of expiration or termination (hereafter referred to as "the Protection Period"), City enters into an Agreement of the character for which Broker had identified the prospect, then, subject to an appropriation of funds by the San Antonio City Council, City shall pay Broker the compensation otherwise due under this Agreement. To qualify for said compensation, Broker shall have done more than merely target a prospect with marketing materials. The extent of Broker's work with a prospect interest shall be shown by Broker's written documentation. If, during the Protection Period, a prospective property is sold or leased while assigned to another licensed real estate broker, then Broker accepts and agrees it shall have no claim to compensation for that sale or lease under this Agreement.

12. Insurance.

Before beginning work, Broker shall acquire the insurance coverages specified on **Exhibit B Required Insurance**, attached hereto and incorporated herein by reference.

13. Indemnity.

13.01 BROKER SHALL FULLY INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY BROKER OR ITS AGENT, BROKER UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH BROKER EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS BROKER AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

13.02 The provisions of this **Article 13 Indemnity** solely are for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Broker shall advise City in writing within twenty four (24) hours of any claim or demand against City or Broker known to Broker related to or arising out of Broker's activities under this Agreement.

14. Assignment and Subcontracting.

14.01. Broker shall supply all personnel necessary to complete the work under this Agreement. Persons working for and with Broker, pursuant to this Agreement, shall be either employees, Consultants, Sub-Consultants, Contractors and/or Subcontractors of Broker.

14.02. Broker only may utilize the Consultants, Sub-Consultants, Contractors and Subcontractors identified on **Exhibit D,** attached hereto and incorporated herein by reference. Deviation from this Sub-Consultant/Subcontractor list, whether deletions, additions or substitutions, must be approved in writing by Director before any new Sub-Consultant and/or Subcontractor may perform work under this Agreement.

14.03. Broker shall have written Agreements with all of its Consultants, Sub-Consultants, Contractors and Subcontractors. City shall not be obligated to any Consultants, Sub-Consultant, Contractors or Subcontractor of Broker or any other person not a party to this Agreement for performance of services or the payment of fees. References in this Agreement to assignee, transferee, Consultant, Sub-Consultant, Contractor and/or Subcontractor indicate only those such entities approved in writing by City.

14.04. Except as otherwise provided herein, Broker shall not sell, assign, pledge, transfer or convey any interest in this Agreement or delegate the performance of any duties hereunder without the written consent of City. Even if written consent by City is given, Broker remains liable for completion of the services required under this Agreement.

14.05. Any attempt to transfer, pledge or otherwise assign this Agreement or any part thereof without City's written approval, is void *ab initio* and confers no rights.

15. Independent Broker.

Broker is an Independent Contractor and not an officer, agent, servant or employee of City. Broker has the exclusive control of and the exclusive right to control the details of the work performed hereunder and all persons performing it. Broker is responsible for the acts and omissions of its officers, agents, employees, Consultants, Sub-Consultants, Contractors, Subcontractors and brokers. The doctrine of respondeat superior does not apply as between City and Broker or those working for or under Broker. Nothing in this Agreement creates a relationship of employer-employee,

principal-agent, partnership or joint venture between City and Broker. City is not and shall not be liable for injury to others arising from or relating to acts of omissions of Broker or those acting under Broker under this Agreement. Broker cannot and shall not bind City.

16. Prohibited Interests in Contracts.

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

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

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

17. Licenses and Certifications.

Broker warrants and certifies it, its employees and its Consultants, Sub-Consultants, Contractors and Subcontractors:

(A) have the requisite training, licenses, and certifications to provide the services required hereunder, and

(B) meet all competence standards promulgated by all regulatory bodies relevant to the work to be performed hereunder.

18. Agency Relationship.

18.01. Broker exclusively shall represent City in all transactions relating to assigned Projects, unless City authorizes Agent in writing to act as an intermediary as to a particular transaction, as the term "intermediary" is defined in Texas Occupations Code Chapter 1101. City's consent to Broker acting as an intermediary does not entitle Broker to do so in a manner prohibited by Texas Occupations Code Chapter 1101 and is not a defense to a claim brought against Broker by City, based on violation of that Chapter.

18.02. If City consents to Broker acting as an intermediary, Broker shall, under all circumstances, provide City with another broker to represent only City in the transaction. If Broker cannot provide another Broker to represent City, Broker shall refuse the Task Order.

19. Compliance.

Broker shall comply with all applicable federal, state, and local laws, rules, and regulations in the course of the work required hereunder.

20. Non-Discrimination Policy

20.01 Non-Discrimination. As a Party to a contract with City, Broker understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, **Article X** of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Broker represents and warrants it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Broker shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, and Broker shall not retaliate against any person for reporting instances of such discrimination. Broker shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Broker acknowledges it understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Broker from participating in City contracts, or other sanctions. This **Section 20.01** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Broker's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Broker shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

20.02 Sub-Consultants. Upon execution of this Agreement by Broker, Broker shall provide City a detailed City of San Antonio Subcontractor/Supplier Utilization form for approval by City, including Broker's list of Consultants, Sub-Consultants, Contractors and Subcontractors and shall require all of its Consultant, Sub-Consultants, Contractors and Subcontractors to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's web site. Broker shall obtain approval in writing from City prior to adding, substituting or deleting any listed and approved Consultant, Sub-Consultant, Contractor and/or Subcontractor from an accepted Task Order.

21. Authority to Bind.

The person who signs on behalf of Broker individually represents and warrants he/she has full legal authority to execute this Agreement on behalf of Broker and to bind Broker to the terms and conditions of this Agreement.

22. Appropriations.

All obligations of City under this Agreement are funded through the City of San Antonio General Fund and are subject to currently budgeted funds and the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Agreement in an annual City of San Antonio Budget, City may terminate this Agreement and have no further liability.

23. Dispute Resolution.

23.01. Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below, the Parties hereto first shall submit in good faith to mediation. The Parties may not assert limitations, laches, waiver and/or estoppels, based upon attempts to mediate.

23.02. Filing suit on a claim that should be mediated hereunder waives the filing Party's right to demand mediation. However, one Party's waiver does not affect another Party's rights under this Agreement. A defending Party does not waive mediation for so long as, within a reasonable time after appearing, the defending Party gives written notice to the plaintiff Party or its counsel of its intent to require compliance with this **Section 23.**

23.03. Mediation shall be conducted in San Antonio, Bexar County, Texas.

23.04. The Party desiring relief has the burden to initiate mediation. Waiting for another Party to initiate mediation does not waive the right to mediation.

23.05. If the Parties can otherwise agree on a mediator, they may do so. Alternatively, either Party may petition any court of competent jurisdiction to appoint a

mediator. The only predicate issues the court need consider before appointing a mediator are whether:

(A) the copy of the Agreement before the court is authentic; and

(B) the Agreement duly was signed and delivered by all Parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

23.06. Mediator fees shall be borne equally by the Parties.

23.07. The Parties need not mediate before going to court for either Party to seek emergency injunctive relief.

24. Miscellaneous.

24.01. **Applicable Law** – This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Broker accepts and agrees the construction of this Agreement and the rights, remedies and obligations arising hereunder are governed by the laws of The State of Texas.** Note: the Texas Conflicts of Law rules shall not be used to cause the application of the laws of a jurisdiction other than Texas. Both Parties' obligations hereunder are performable in San Antonio, Bexar County, Texas.

24.02. **Severability** – If any Article or Section of this Agreement is determined to be invalid or unenforceable, said invalid or unenforceable Article and/or Section shall be deemed to not be a part of this Agreement and said determination shall not affect the remaining valid and enforceable Articles and Sections of this Agreement.

24.03. **Successors** – This Agreement inures to the benefit of and is binding on the heirs, representatives, successors and permitted assigns of each Party. This clause does not authorize any assignment not otherwise authorized herein.

24.04. **Integration** – This written Agreement represents the final Agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties. Both City and Broker attest there are no oral agreements between the Parties.

24.05. **Modification** – This Agreement may only be changed by a written Agreement, signed by the party against whom enforcement of any modification is sought. City may be bound to a modification by the Director's signature, except any modification of the Fee to Broker causing the not-to-exceed total amount paid to Broker hereunder to exceed **$25,000.00 per transaction** must be approved by ordinance of the San Antonio City Council. Broker is limited to a commission cap of $300,000 per year.

24.06. **Third-Party Beneficiaries** – This Agreement is intended for the benefit of the Parties hereto and their successors and permitted assigns only. This Agreement has no third-party beneficiaries.

24.07. **Notices** – Any notice provided for or permitted hereunder shall be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth below. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Notice other than by certified mail, return receipt requested, is effective only on actual receipt. Address for notice may be changed by giving notice hereunder. The initial address for notice to Broker is Broker's Address specified at the beginning of this Agreement. The initial address for notice to City is:

Transportation and Capital Improvements
Real Estate Division
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

With a copy to:

Director
Transportation & Capital Improvements Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

24.08. **Pronouns** – In construing this Agreement, plural constructions include the singular and singular constructions include the plural. No significance shall be attached to whether a pronoun is masculine, feminine or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

24.09. **Captions** Paragraph titles and captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

24.10. **Counterparts** – This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, whether or not all Parties sign the same document. Regardless of their number, the counterparts constitute only one Agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

24.11. **Incorporation of Exhibits** – Each Exhibit referenced in this Agreement is incorporated herein by reference for all purposes as if it were fully set forth.

24.12. **Further Assurances** – The Parties shall execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, can alter the rights or obligations of the Parties as contained in this Agreement

24.13. **Administrative Agreements** – The Director may, without further San Antonio City Council action, agree to, sign and deliver on behalf of the City all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and may declare defaults and pursue remedies for such defaults. This **Section 24.13** does not authorize lease amendments or renewals without San Antonio City Council consent.

25. Public Information.

Broker acknowledges this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this _____ day of _____ 20_____.

CITY OF SAN ANTONIO

By: _____
Peter Zanoni
Assistant City Manager

NAME OF FIRM

By:_____

Approved as to Form:

_____
City Attorney

EXHIBIT A

SCOPE OF WORK

The scope of work includes the requirement for Broker to provide real estate services, to include:

1. marketing for sale or lease City-owned property in the Southwest Business and Technology Park and other lease spaces in City facilities suitable for retail or office use by private firms;

2. acquiring proprieties for City needs on both a fee purchase and leasehold interest; and

3. providing consultation services to assist City with marketing Public Private Partnership (hereafter referred to as "P3") sales opportunities.

Broker is the primary liaison with City departments to provide leasing assistance and acquiring properties for City's needs. Broker is required to identify the needs of City departments, provide site searches based upon identified needs, develop and implement marketing plans to lease/sell City owned property, arrange inspection tours for prospective buildings/properties, prepare summaries of real estate market trends, negotiate contracts for tenant possession/buyer purchase, maintain complete records of all projects and prepare and submit quarterly reports.

Broker will provide real estate services, to include, but not be limited to:

- marketing developable land parcels in the Southwest Business and Technology Park;
- marketing available retail and other lease space in City-owned facilities;
- working with Center City Development and Operations Department staff to assist it (as determined by the Department on an as-needed basis) other City departments in leasing space and acquiring properties for a variety of City uses;
- marketing and coordinating the leasing of office and retail space deemed in excess of City's needs, to include the Frost Bank Tower is acquired by City;
- development and marketing of P3 strategies in accordance with existing State laws and in compliance with City's P3 Policy, said P3 Policy attached hereto, incorporated herein by reference and labeled as **"RFP Exhibit A"**, for the disposition of City-owned property, to achieve a balance between return on value and the need to promote development of sustainable projects benefiting the community;
- providing information resources at no charge to City including:

    - two internet subscription-access licenses to Costar for the entire San Antonio market;

- a license to access the Building Owner and Managers Association online database for operation expenses in the Austin and San Antonio markets for office, industrial and retail facilities;
- the quarterly San Antonio Real Estate Journal's Commercial Real Estate Report;
- the REOC Partners Quarterly Office and Retail reports for the entire San Antonio market;
- any other published information providing information on market trends, to assist City in real estate decision making.

- Broker's ability to market residential properties directly or through a strategic partnership that will allow, when appropriate, use of the San Antonio Board of Realtors Multiple Listing Service.

Other services Broker will provide to City as a Buyer, Tenant or Owner, in leasing space and purchasing/disposing of property, includes, but is not limited to:

A. **Identification of Needs** – For property to be procured by City, assist City with a needs assessment to determine requirements. Examples of needs to be assessed are location, amount and type of space, public transportation access and employee/public parking needs. For City-owned property to be marketed by Broker, Broker will assist City with developing space/property options that best meet the specific requirements of each property. For the development of the Frost Bank Tower Project, Broker will provide input on planning and infrastructure development issues as they relate to future marketability of the project, with the intent of implementing a marketing and development program positioning the space to be offered in the building to achieve a maximum value in an aggressive time frame.

B. **Site Searches** – Conduct site searches, based on identified needs, to locate and lease/purchase property which conforms to the established requirements and price parameters.

C. **Marketing** – Develop and implement marketing plans to lease/sell City-owned property within reasonable timeframes on terms favorable to City. Provide necessary support to the developed and implemented marketing plan, to include appropriate staff, marketing materials, brochures, advertising, cold calling, etc.

D. **Inspection** – Arrange tours to prospective buildings/properties. Arrange tours as City's representative for City-owned properties for sale or lease.

E. **Market and Comparative Analysis** – For general information, prepare summaries of real estate market trends in San Antonio. For specific assignments, prepare matrices outlining the key economic and non-economic terms and conditions for each building/property, including net present value/comparable valuation system analysis.

F. **Negotiations** – Solicit lease/purchase proposals for the prospective buildings/property. Initiate lease/purchase proposals for prospective tenants/buyers. Negotiate contracts required for tenant possession/buyer purchase (including any improvements to the facility). Negotiate contracts for owner leasing/sale of property/buildings. Provide assistance with post-contract due diligence requirements and closing.

G. **Lease/Purchase Documentation** – Maintain complete records of all projects. At the completion of transactions, transfer all documentation to City.

H. **Performance and Reporting** – Work to lease/sell property according to established goals for marketing activity and sales or lease up based on each assigned Project. Prepare and submit quarterly reports, or as requested, reflecting performance related to the established goals for each assigned Project.

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to the commencement of any work under this Agreement, Broker shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "**On-Call Commercial Real Estate Brokerage Services**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent, accompanied by an affidavit also signed by Broker, attesting the furnished Certificate(s) represent Broker's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and phone number. The certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this **Exhibit B** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance shall City allow modification whereby City may incur increased risk.

Broker's financial integrity is of interest to City; therefore, subject to Broker's obligation to maintain reasonable deductibles in such amounts as are approved by Broker's insurance companies, Broker shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof at Broker's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects. If a project does not justify these standard limits of insurance coverages, Broker may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury * d. Environmental Impairment/Impact – sufficiently broad to cover disposal liability *e. Explosion, Collapse, Underground	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for not less than two (2) years, subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error, or omission in performance of professional services.
6. * Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure
7. *Property Insurance: For physical damage to the property of Lessee, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
* If applicable	
These insurance types and amounts only may be amended by the City of San Antonio Risk Management Division	

City may request, and without expense to City, to inspect copies of Broker's policies and endorsements as they apply to the limits and forms required by City.

Broker agrees to require, by written contract, all Consultants, Sub-Consultants, Contractors and/or Subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Broker herein, and provide to Broker a certificate of insurance and endorsement naming Broker and City as additional insureds. Policy limits of the coverages carried by Consultants, Sub-Consultants, Contractors and Subcontractors shall be determined as a business decision of Broker. Broker shall provide City with said certificate and endorsement prior to the commencement of any work by any Consultants, Sub-Consultant, Contractors and/or Subcontractor and through the period referenced in herein. 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.

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

Broker shall mark those portions of the policy, if any, Broker regards as confidential. In the event a third party makes an Open Records Request, under the Texas Public Information Act asking to view or copy Broker's policy, City shall make a determination consistent with state law as to whether to submit the received request, along with Broker's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Broker's policy information and will keep Broker apprised of any developments. .

Broker agrees, with respect to the above required insurance, that all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause will not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and

- Where allowed by respective policy provisions, terms and conditions, provide advance written notice to City of any suspension or non-renewal in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.

- All correspondences regarding Broker's Insurance requirements shall be sent to:

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

Within five (5) calendar days of notice to Broker of a cancellation or non-renewal of coverage, Broker shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Broker'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.

In addition to any other remedies City may have upon Broker's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Broker to stop work hereunder until Broker demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Broker may be held responsible for payments of damages to persons or property resulting from Broker's or its Consultants', Sub-Consultants', Contractors' and/or Subcontractors' performance of the work covered under this Agreement.

It is agreed Broker'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.

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

Broker and any Consultants, Sub-Consultants, Contractors and/or Subcontractors are responsible for all damage to their own equipment and/or property.

EXHIBIT C

COMPENSATION TO BROKER

TO BE FILLED IN

EXHIBIT D

SBEDA ORDINANCE COMPLIANCE PROVISIONS AND SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. SBEDA Program

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 City's Economic Development (hereafter referred to as "EDD") website page and also is available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this agreement are governed by the terms of said Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City, pursuant to said Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual in effect as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this **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 (hereafter referred to as "API") – refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (hereafter referred to as "S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater prime contract 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 (hereafter referred to as "CVR") – refers to a mandatory electronic system wherein City requires all prospective Respondents and Sub-Consultants ready, willing and able to sell goods or services to City to register using this system. 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 City. The CVR-assigned identifiers also are used by City's Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE (as defined herein) firms by Industry or commodity codes and for establishing annual aspirational Goals and contract-by-contract Subcontracting Goals.

Certification or "Certified" – refers to the process by which City's Small Business Office (hereafter referred to as "SBO") staff determines a firm to be a bona-fide small, minority-, women-owned or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as "ESBEs") automatically are eligible for Certification as SBEs. Any firm may apply for multiple Certifications covering 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, City accepts any firm that is certified by local government entities and/or 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 in Section III.E.6 of Attachment A to the SBEDA Ordinance.

Commercially Useful Function – means a 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 also must 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 actually is performing, 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 Respondent/Consultant to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by City as fraudulent, if Respondent/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, Respondent/Consultant shall not be given credit for the participation of its S/M/WBE Sub-Consultant or joint venture partner towards attainment of S/M/WBE utilization goals, and Respondent/Consultant 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 (hereafter referred to as "GSC") to Construction, Architectural & Engineering, Professional Services, Other Services and Goods and Supplies contracts/agreements to be awarded on a basis of factors other than lowest price, and wherein responses submitted to 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 Respondents.

Good Faith Efforts – means the documentation of Consultant's/Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but are 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 Sub-Consultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Respondent and the solicitation; and documentation of consultations with trade associations and Sub-Consultants representing the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Sub-Consultants.) The appropriate form and content of Respondent's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – means a business certified by the 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 <u>must</u> meet all fo the following criteria:

(1) The business is owned and Controlled by U.S. citizens;

(2) At least thirty five percent (35%) of the business's employees must reside in a HUBZone; and

(3) The business's 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 – means the 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 – means an adult person that is of legal majority age.

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

Minority/Women Business Enterprise (hereafter referred to as "M/WBE") – refers to a firm certified as a Small Business Enterprise and also is certified as either a Minority Business Enterprise or as a Women Business Enterprise, is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members and/or women and is ready, willing and able to sell goods or services to be purchased by City.

M/WBE Directory – refers to a listing of minority- and women-owned businesses certified for participation in City's M/WBE Program APIs.

Minority Business Enterprise (hereafter referred to as "MBE") – means any legal entity, except a joint venture, organized to engage in for-profit transactions, certified as a Small Business Enterprise and is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, as defined below, and is ready, willing and able to sell goods or services to be purchased by City. To qualify as a MBE, the enterprise shall meet the Significant Business Presence requirement defined herein. Unless otherwise stated, the term MBE, as used in City's Ordinance, is not inclusive of women-owned business enterprises.

Minority Group Members – refers to 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 one sixteenth ($1/16^{th}$) 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 – refers to a City department or authorized representative of City issuing a solicitation or for which a solicitation is issued.

Payment – refers to the dollars actually paid to Respondent/Consultant and/or Sub-Consultants, Vendors and Suppliers for City-contracted goods and/or services.

Points – refers to 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 ten (10) points out of a total of one hundred (100) points assigned for S/M/WBE participation, as stated in City's issued Request for Qualifications or Requests for Proposals).

Prime Consultant – refers to a Consultant, under contract to City, to whom a purchase order or contract is issued by City for the purposes of providing goods or services to City. For purposes of this Agreement, this term refers to Consultant/Respondent.

Relevant Marketplace – means 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 City's SBEDA Ordinance, defined as the San Antonio Metropolitan Statistical Area (as defined herein), which currently includes the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – refers to an entity submitting a bid, Statement of Qualifications or Proposal in response to a solicitation issued by City. For purposes of this agreement, Consultant is Respondent.

Responsible – means a firm capable in all respects fully to perform the contractual requirements outlined in City's solicitation and has the integrity and reliability to assure good faith performance of all project specifications.

Responsive – means a firm's submittal (i.e. bid, response or proposal) conforming in all material respects to the solicitation (i.e. Invitation for Bid, Request for Competitive Sealed Proposal, Request for Qualifications or Request for Proposal) and is in compliance with a project's S/M/WBE Program requirements.

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

SBE Directory – refers to a listing of small businesses certified for participation in City's SBE Program APIs.

Significant Business Presence – defined as an established place of business in one or more of the eight (8) counties making up the SAMSA, from which twenty percent (20%) of the entity's full-time, part-time and contract employees regularly are 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. To qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one (1) year within the Relevant Marketplace

Small Business Enterprise (hereafter referred to as "SBE") – means a corporation, partnership, sole proprietorship or other recognized legal entity existing for the purpose of making a profit, is independently owned and operated by Individuals legally residing in or are citizens of the United States or its territories, meets the U.S. Small Business Administration (hereafter referred to as "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 (hereafter referred to as "SBO") – means the office within City's EDD Department primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager (hereafter referred to as "SBO Manager" – refers to the Assistant Director of EDD 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 also is responsible for enforcement of Consultant and vendor compliance with contract participation requirements and ensuring that overall SBEDA Program goals and objectives are met.

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

Sub-Consultant – means any vendor of Respondent/Consultant providing goods or services to Respondent/Consultant in furtherance of Respondent's/Consultant's performance under an agreement, contract or purchase order with the City. A copy of each binding agreement between Respondent/Consultant and its Sub-Consultants shall be submitted to City in writing prior to execution of this Agreement and any modification to this Agreement.

Suspension – means the temporary stoppage of a SBE or M/WBE firm's beneficial participation in City's S/M/WBE Program for a finite period of time, due to the cumulative contract payments the S/M/WBE firm received during a fiscal year exceeding 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 City's imposition of Penalties and Sanctions, as set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Sub-Consultant/Supplier Utilization Plan – refers to the binding part of this Agreement stating Respondent's commitment for the use of Joint Venture Partners and/or Sub-Consultants and/or Suppliers in the performance of this Agreement, stating the name,

scope of work and dollar value of work to be performed by each of Respondent's Joint Venture partners and/or Sub-Consultants/Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and/or Sub-Consultant/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Sub-Consultant/Supplier names, scopes of work or dollar values of work to be performed requires an amendment to this Agreement approved by the EDD Manager or his/her designee.

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

C. SBEDA Program Compliance – General Provisions

Respondent/Consultant acknowledges and accepts the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines and procedures set forth in City's SBEDA Policy & Procedure Manual, are in furtherance of City's efforts at economic inclusion and, moreover, such terms are part of Respondent/Consultant's Scope of Work, as referenced in City's formal solicitation, forming the basis for a contract award and subsequent execution of this Agreement. These SBEDA Ordinance requirements, guidelines and procedures hereby are incorporated by reference into this Agreement and are considered by the Parties hereto to be material terms. Respondent's/Consultant's agreement fully to comply with these SBEDA program terms is a material condition for being awarded this Agreement by City. Without limitation, Respondent/Consultant further agrees to the following terms as part of its contract compliance responsibilities under City's SBEDA Program:

1. Respondent/Consultant fully shall cooperate with the SBO and other City departments in the data collection and monitoring efforts regarding Respondent's/Consultant's utilization and payment of and to Sub-Consultants/Suppliers, S/M/WBE firms and HUBZone firms, as applicable, for their performance of Commercially Useful Functions pursuant to this Agreement 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, the timely entry of data into monitoring systems and ensuring the timely compliance of its Sub-Consultants/Suppliers with this term;

2. Respondent/Consultant fully shall cooperate 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 Respondent/Consultant, its Sub-Consultants and/or Suppliers;

3. Respondent/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 Sub-Consultants/Suppliers and workers to determine whether there has been a violation of the terms of this Agreement;

4. Respondent/Consultant immediately shall notify the SBO, in writing, on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Respondent's/Consultant's Sub-Consultant/Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Respondent/Consultant to replace the Sub-Consultant/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes by Respondent/Consultant to its Sub-Consultant/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Respondent/Consultant of work previously designated for performance by Sub-Consultant or Supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. Respondent/Consultant immediately shall notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.

6. Respondent/Consultant shall retain all records of its Sub-Consultant/Supplier payments pursuant to this Agreement for a minimum of four (4) years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this Agreement, for a minimum of four (4) 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 Respondent's/Consultant's Sub-Consultant/Supplier Utilization Plan, Respondent/Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone Sub-Consultant(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals and Respondent/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. Respondent/Consultant acknowledges City will not execute a contract or issue a Notice to Proceed for any work on this Project until Respondent/Consultant and each of its Sub-Consultants and Suppliers for this Project have registered and/or maintained active status in City's Centralized Vendor Registration System and Respondent/Consultant has represented to City which primary commodity codes each registered Sub-Consultant and Supplier shall be performing under this Agreement.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

City has applied the following contract-specific Affirmative Procurement Initiatives to this Agreement. Respondent/Consultant hereby acknowledges and agrees the selected API requirement also shall 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. 3. (b), this Agreement is being awarded pursuant to the SBE Prime Contract Program and, as such, Respondent/Consultant affirms if it presently is certified as an SBE, Respondent/Consultant agrees not to subcontract more than 49% of the contract value to a non-SBE firm, **and**

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 4. (b), this Agreement is being awarded pursuant to the M/WBE Prime Contract Program and, as such, Respondent/Consultant affirms if it presently is certified as an M/WBE (see *Minority/Women Business Enterprise* definition), Respondent/Consultant agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm, **and**

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 3. (a), this Agreement also is being awarded pursuant to the SBE Subcontracting Program. Respondent/Consultant agrees to sub-contract at minimum **twenty-nine percent (29%)** of its prime consulting contract value to certified SBE firms headquartered or having a Significant Business Presence within the SAMSA. Respondent/Consultant accepts, agrees and confirms the Subcontractor/Supplier Utilization Plan it submitted to City with its response for this solicitation (or, if applicable, Respondent/Consultant agrees to submit during the price proposal negotiation phase with City) contains the names of the certified SBE Sub-Consultants/Suppliers to be used by Respondent/Consultant pursuant to this Agreement, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Sub-Consultant and other documentation, to include a description of each SBE Sub-Consultant's scope of work and confirmation each SBE Sub-Consultant's commitment to perform such scope of work for an agreed upon dollar amount, is attached to its submission and incorporated therein by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, Respondent/Consultant accepts and agrees its failure to attain the established sub-consulting/supplier goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of this Agreement shall be a material breach of this Agreement, shall be grounds for termination of its Agreement with City, may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: City strongly encourages Respondent to be as inclusive as possible and to reach out to all segments of the M/WBE community, in Respondent's efforts to exercise good faith in achieving the SBE sub-consulting/subcontracting goal of 29% established for this Agreement. While the relative availability of ready, willing and able firms within various ethnic and gender categories significantly may vary from contract to contract, based upon the particular trades that are involved, overall in the San Antonio Architecture and Engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of October 2015, African-American owned firms represent approximately 1.58% of available subcontractors, Hispanic-American firms represent approximately 10.51%, Asian-American firms represent approximately 1.75%, Native American firms represent approximately 0.18%, and Women-owned firms represent approximately 4.38% of available Architecture and Engineering Sub-Consultants.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, Respondent represents and warrants it has complied with, throughout the course of this solicitation and contract award process and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Respondent 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 Sub-Consultants, vendors, Suppliers, or commercial customers, nor shall Respondent retaliate against any person for reporting instances of such discrimination. Respondent shall provide equal opportunity for Sub-Consultants, vendors and Suppliers to participate in all of Respondent's/Consultant's public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this **Section F** shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Respondent understands and agrees a material violation of this **Section F** shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Respondent from participating in City contracts or other sanctions. This **Section F** is not enforceable by or for the benefit of, and creates no obligation to, any third party. Respondent's certification of its compliance with this Commercial Nondiscrimination Policy, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement.

Respondent shall incorporate this Commercial Nondiscrimination Policy clause into each of its Sub-Consultant and Supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this Agreement, Respondent/Consultant shall be required to submit to City accurate progress payment information with each invoice, with regard to each of its Sub-Consultants/Suppliers, including HUBZone Sub-Consultants, to ensure Respondent's/Consultant's reported subcontract participation is accurate. Respondent/Consultant shall pay its Sub-Consultants/Suppliers in compliance with Chapter 2251, Texas Government Code (known as the "Prompt Payment Act") within ten (10) days of receipt of payment from City. In the event of Respondent's/Consultant's noncompliance with these prompt payment provisions, no final retainage on the Agreement shall be released to Respondent/Consultant, if withheld, and no new City contracts shall be issued to Respondent/Consultant until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

H. Violations, Sanctions and Penalties

In addition to the above terms, Respondent acknowledges and agrees it is a violation of the SBEDA Ordinance and shall be deemed to have committed a material breach of this Agreement if Respondent:

1. fraudulently obtains, retains, attempt to obtain, or aids 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 falsifies, conceals or covers up by a trick, scheme or device, a material fact or makes any false, fictitious or fraudulent statements or representations, or makes use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statements or entries pursuant to the terms of the SBEDA Ordinance;

3. willfully obstructs, impedes or attempts to obstruct or impede any authorized official or employee investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. fraudulently obtains, attempts to obtain or aids 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. makes 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 of entity violating the provisions of this **Section H** 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 Respondent or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon approval by the San Antonio City Council).

Agenda Item:	**21 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 14, 16, 18, 19, 20, 21)**
Date:	03/03/2016
Time:	09:34:57 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of three professional services agreements with Providence Commercial Real Estate Services, Inc., Peloton Real Estate Partners San Antonio, LLC and CBRE Inc. to provide real estate brokerage services on as needed basis in connection with acquisition, disposition or leasing of real estate for a term of two years with the option to renew for two additional one year extensions. [Lori Houston, Assistant City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x			x	
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				