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AN ORDINANCE 2014-10-09-0783

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH MOORE IACOFANO GOLTSMAN, INC. FOR CONSULTING SERVICES PERTAINING TO THE COMPREHENSIVE PLAN UPDATE IN AN AMOUNT NOT TO EXCEED $250,000.00.

* * * * *

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

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

WHEREAS, based on the growth scenario work developed in Part One of the Comprehensive Plan update and the growth scenario adopted by the Metropolitan Planning Organization, Part Two of the Comprehensive Plan update will focus on articulating the physical development of growth centers, providing urban design illustrations of development patterns and market and resource readiness for such patterns, and developing Comprehensive Plan Elements; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to hire an independent firm to provide consulting services for developing an update to the San Antonio Comprehensive Plan; **NOW THEREFORE,**

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

SECTION 1. The City Manager or her designee is hereby authorized to execute an agreement with Moore Iacofano Goltsman, Inc., for consulting services pertaining to the Comprehensive Plan updates in an amount not to exceed $250,000.00, with substantially the same terms and conditions as those set out in the draft agreement attached hereto as **Attachment "I".**

SECTION 2. Funding in the amount of $250,000.00 for this ordinance is available for Fund 11001000, Cost Center 5002000001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Moore Iacofano Goltsman, Inc. and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers,

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SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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

PASSED AND APPROVED this 9th day of October 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

For Robert F. Greenblum, City Attorney

Agenda Item:	**18 (in consent vote: 4, 5, 6, 7, 8, 11, 12, 13, 14, 16, 17, 18, 19)**
Date:	10/09/2014
Time:	09:27:39 AM
Vote Type:	Motion to Approve
Description:	An Ordinance for the City's Comprehensive Plan authorizing a professional services agreement with Moore Iacofano Goltsman, Inc. for consultant services pertaining to the Plan's development and related public outreach efforts in the amount not to exceed $250,000.00 from prior City Council approved and budgeted funds. [Peter Zanoni, Deputy City Manager; John Dugan, Director, Planning & Community Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x			x	

PROFESSIONAL SERVICES AGREEMENT
FOR
COMPREHENSIVE PLAN CONSULTING SERVICES PHASE II

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to Ordinance No. 2014-10-09-_____ passed and approved on the 9th day of October, 2014 and Moore Iacofano Goltsman, Inc. (MIG) by and through its CEO/ Principal, Daniel Iacofano ("Consultant"), both of which may be referred to herein collectively as the "Parties".

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

I. DEFINITIONS

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

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

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

"Director" shall mean the director of City's Planning and Community Development Department.

"DPCD" shall mean City of San Antonio Department of Planning & Community Development.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 9, 2014 and terminate on December 31, 2015. The City Manager is authorized to amend this Agreement by extending the term for a period of up to six months in accordance with Article XVI. Amendments.

Attachment I

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

III. SCOPE OF SERVICES

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

3.2 The objective of this scope of work is to develop an updated Comprehensive Plan for the City of San Antonio while actively engaging the community in the creation of the vision for growth and development.

3.3 The scope of work shall include the following tasks: Policy Review and Synthesis, Develop Policy Papers, Public Engagement and Website Creation, Develop Urban Design Illustrations, Draft the Comprehensive Plan Document, Comprehensive Plan Meetings, and Project Management.

3.3.1 Document Policy Review and Synthesis

MIG's Responsibility: MIG will review relevant existing City, and other agency, long-range planning documents, including SA2020, the 2010 Update to the Master Plan Policies, VIA Metropolitan Transit Agency studies and plans, Alamo Area Metropolitan planning Organization studies and plans, and the EPS Phase I Comprehensive Plan Studies. The plans and studies will be provided to MIG by DPCD. MIG, in consultation with the Director, or his/her designee, will identify the relevant existing goals and policies that will be transferred into the various elements of the updated comprehensive plan. MIG will identify all necessary documents for review in coordination with DPCD staff. Tele-conference communication shall be acceptable for this task.

The MIG Team will prepare a comprehensive plan technical background report that summarizes existing conditions within San Antonio in a succinct format. In addition, the MIG Team will supplement the report with a PowerPoint presentation for use during meetings with the Comprehensive Plan Advisory Board ("CPAB"), decision makers and the community and for posting on the project website. The report will summarize background information and include maps, graphics, photos and narrative text describing the following:

- Housing, Growth, Land Use, and Population: Summary of population, household and employment trends in San Antonio, as well as historical land use patterns and policies. This will also include a summary of housing conditions based on work prepared by the consultant working on the 5-year Federal Consolidated Plan.

- Transportation: Summary of existing transportation and mobility conditions and background data.
- Community Health: Summary of public health topics including physical activity levels, land use patterns and transportation networks as they relate to active transportation, and access to nutritious foods, health care and health facilities.
- Sustainability: Summary of the existing conditions in the community related to sustainability, relative to both the built and natural environment, including water and energy use and efficiency, green buildings and climate change adaptation.
- Military: Summary of existing conditions related to the substantial military presence in San Antonio, describe future growth plans for military bases, and identify background data to be utilized for policy development as they relate to the vision for the city's military presence.
- Economic: Summary of economic trends including major employers, industries and occupations.

The deliverable in this task will be a Technical Background Report developed and submitted in PowerPoint format with notes pages, detailing the findings of the existing document review that will be presented by staff at the City Council's Comprehensive Planning Committee.

City's Responsibility: DPCD will be responsible for providing all requested documents for MIG review. Further, the City will coordinate with relevant public agencies to provide their studies, plans, etc. that are not under City control. All documents will be submitted to MIG in the requested format. DPCD will conduct all presentations regarding this task and will produce all copies and printed materials.

3.3.2 Policy Papers

MIG's Responsibility: MIG will lead the development of six policy papers, with City Staff as support. This phase will engage various industry and community leaders, including those organizations currently acting as "SA2020 cause area lead partners", in the development and discussion of expert group policy papers.

The MIG Team will prepare a series of topical policy papers that will include assets, opportunities and challenges. These "white papers" will be a key step in the planning process and will provide the basis for more specific policy recommendations. The paper will also include and consolidate input received from previous community outreach efforts and the topic-specific industry sector meetings.

The policy papers will be on the following topics:

- Housing, Growth, Land Use, and Population (to include Annexation)

1) Detailed discussion of various land use scenarios, with a recommended "preferred land use scenario" that will guide the comprehensive planning process.

2) Discussion and analysis of specific areas for catalytic change and growth, infill opportunities, and areas of preservation.

3) An Annexation Policy Framework detailing recommended policy modifications to address growth and annexation issues.

- Transportation (this will be coordinated with the Transportation & Capital Improvements Department and will occur in collaboration with the City's Multi-Modal Transportation Plan initiative)

  Discussion of appropriate goals, policies and objectives as they relate to the vision for the city's transportation system.

- Community Health, Public Facilities and Safety

  Analysis of police, fire and emergency services, as well as schools, childcare and senior care facilities goals, policies and programs.

- Sustainability (both built and natural environment)

  Coordinate with the Office of Sustainability on:

  i. Analysis of climate change impacts, mitigation and adaptation strategies.

  ii. Analysis of policies and ideas from the other policy papers to identify environmentally and ecologically sustainable infill development approaches at different scales to develop a sustainable infill model for San Antonio.

  iii. Method for integrating the Sustainability Plan Framework within the Comprehensive Plan.

- Military

  1) Policy paper will incorporate discussion related to the various Joint Land Use Studies in Bexar County and neighboring counties.

  2) Analysis of potential impacts on services due to an increasing number of veterans in San Antonio, particularly Wounded Warriors and veterans who for whatever reason may be struggling to find employment.

- Economic Competitiveness

Development of new goals and policies to establish a coordinated, multifaceted approached to economic development and a plan to ensure the City is well position to attract workers and businesses.

Each policy paper will be prepared in Microsoft Word and will include the components listed below. Creativity in the development of the policy paper is encouraged to improve the quality and functionality of the paper, provided that the final component list is approved by the DPCD Director or his designee.

1) Cover Page
2) Credits
3) Table of Contents (with a List of Figures)
4) Introduction and Intent
5) List of Participants and Interviewees
6) Executive Summary/Introduction to the Plan Element – Definition of the Key Policy Issues, Background Data and Abbreviated Recommendations
7) Detailed Discussion of Key Policy Issues and Detailed Recommendations
8) Definitions

MIG will include the review of the different growth center scenarios (as developed by EPS in the Phase I Comprehensive Plan Studies), annexation policy, housing/job opportunities and constraints assessment, preferred land use and the integration of transit supportive land use with local/regional transportation plan(s), and the draft Comprehensive Plan policies in the applicable policy paper.

MIG will develop the basic characteristics of the Comprehensive Plan Elements based on continuous and diverse community input. MIG will modify and finalize the Comprehensive Plan Elements in coordination with staff. Lastly, in order to ensure broad support of the Comprehensive Plan, MIG will also propose to staff, modify, and finalize the basic characteristics of the Comprehensive Plan Elements based on continuous and diverse community input.

The deliverable in this task will be six (6) Policy Papers, all developed and submitted in Microsoft word format, and a PowerPoint (with notes pages) on each report detailing the findings that will be presented by staff at the City Council's Comprehensive Planning Committee.

City's Responsibility: DPCD will be responsible for developing the list of industry leaders to participate in the development of the comprehensive plan policies, with assistance from the City Council's Comprehensive Planning Committee – a subcommittee of the City Council. DPCD will provide MIG with a detailed list of all "expert groups" and other significant stakeholders. The City and MIG will collaborate on the most appropriate forum to engage the various stakeholders and will be support staff at

all meetings and tele-conferences (as applicable). The City will be responsible for the logistical organization of all meetings and tele-conferencing and will produce all copies and printed materials.

City staff will provide one consolidated and internally confirmed set of comments, from City staff, CPAB and confirmed decision makers, on the draft policy papers to the MIG Team. The MIG Team will then update each paper to address and reflect City staff comments and direction.

DPCD will present the policy papers to the CPAB for their input and response. DPCD will collaborate with MIG to finalize the reports based on CPAB feedback; MIG will make all requested changes.

3.3.3 Public Engagement Support and Website Creation

MIG's Responsibility: MIG will provide expertise to City Staff related to unique and innovative modes of general public engagement, to include conducting large Community Open Houses, which have been field tested in other communities. Recommendations and an overall outreach approach will be summarized in a comprehensive community engagement strategy which will identify how best to conduct outreach to community members during the project. The strategy will include components such as a schedule, key priorities, structure, community involvement and outreach activities, and identification of key stakeholders and relationships. It will also include a detailed process diagram to illustrate the sequence and timing of project activities in a succinct format. The strategy will be coordinated and integrated with other City outreach efforts, most specifically the Sustainability Plan and Transportation Plan projects. The community engagement strategy will be synthesized and detailed in a PowerPoint presentation that will be provided to City Staff so the ideas can be discussed and vetted at the City Council's Comprehensive Planning Committee. MIG will develop all presentations for the public participation task. MIG will collaborate with staff in preparing two (2) large-scale community open house events and will co-facilitate said events. The format and content of these open house events will be a collaborative and creative process that will occur between the City and MIG, with final approval of said format and planning process by the Director, or his designee.

MIG will be responsible for the development of a professional and interactive Comprehensive Plan website, with final approval of the website content and appearance by the Director, or his designee. The website is intended to be interactive and fully utilized as a tool for public outreach and engagement throughout the planning process. All comprehensive plan news and events shall be posted in a timely manner on the project website. The website shall have a concise and memorable internet address and shall have a private log-in page for staff and consultant collaboration and the exchange of information in a secure environment. The website shall be developed in collaboration with the City of San Antonio's ITSD Department and transferrable to the City's servers upon termination of this contract.

The deliverable in this task will be the community engagement strategy, completion of two (2) large-scale City-wide open houses and creation of an interactive project website.

City's Responsibility: DPCD will be responsible for organizing all logistics related to the community open houses. The City will duplicate all written documents and will provide all necessary materials for potential open house exercises. DPCD will be the official contact for all correspondences related to the open house events. DPCD staff will staff all public hearings and other legally required hearings.

Further, DPCD will support MIG in the maintenance and upkeep of the Comprehensive Plan website and will provide necessary information in a timely manner. For maximum efficiency, all requested content changes will be completed either by MIG staff or a designated City staff (with administrator access permission to the site) in a timely manner.

3.3.4 Develop Urban Design Illustrations

MIG's Responsibility: For inclusion in the comprehensive plan document as it relates to urban form, MIG will create up to twenty (20) urban design illustrations of various town, village, and neighborhood design concepts. These illustrations will depict birds-eye and other views of specific growth center types and will include the "before and after" applications of smart-growth concepts as are commonly applied to existing commercial corridors, neighborhood centers, transit nodes and other growth center types. The primary illustrations will be developed with a hand-drawn effect. MIG shall supplement these illustrations with computer-aided design techniques to ensure the proper appearance of each illustration.

Further, MIG will develop a "building prototype technical manual" and supplemental PowerPoint presentation, of images of the building prototypes to achieve desired density in the recommended growth centers. These illustrations are not required to be hand-drawn; actual photographs and examples are deemed more appropriate for this portion of the task. Example: Many of these buildings may be medium-density structures that are compatible within an existing neighborhood context and should relate architecturally to a neighborhood in San Antonio.

The deliverables in this task will be up to twenty (20) urban design illustrations in original and digital format, to include PDF (MIG can prepare additional illustrations based upon scope and budget discussion with City staff). Additionally, MIG will deliver a "Recommended Building Prototypes Technical Manual" with a supplemental PowerPoint (with notes pages) detailing the findings and illustrations that will be presented by staff at the City Council's Comprehensive Planning Committee.

City's Responsibility: DPCD will collaborate with MIG on the concepts behind the illustrations and shall approve all work prior to being considered final. Further,

DPCD will collaborate with MIG on the selection of neighborhoods that may be used in depicting context-sensitive in-fill development solutions for the "building prototype technical manual." City staff will also provide one consolidated and internally confirmed set of comments from City staff, CPAB and confirmed decision makers, on the draft illustrations to the MIG Team. The MIG Team will then update the illustrations to address and reflect City staff comments and direction.

3.3.5 Draft the Comprehensive Plan and Implementation Document; "E-Plan"

MIG's Responsibility: MIG will develop a policy framework document that identifies new and/or modified goals, policies and implementation programs needed to implement the preferred land use scenario, which shall be utilized as the key tool to develop the organizational structure of the Comprehensive Plan.

MIG will also prepare a draft and a final web-based Comprehensive Plan Document and Implementation Report, which will include all updated plan elements (tentative elements below) in response to directives from DPCD, the Comprehensive Planning Committee and the City Council. The web-based Comprehensive Plan Document will be based on the vision, policies, strategies and ideas that emerge from the SA 2020 and Comprehensive Plan processes. The document will comply with all federal, state, and local laws, rules and regulations.

Tentative Comprehensive Plan Elements

- Growth & Urban Form
- Transportation & Connectivity
- Housing
- Green & Healthy Communities
- Public Facilities & Community Safety
- Historic Preservation
- Military Affairs
- Jobs and Economic Competiveness
- Natural Resources
- Implementation report

MIG will develop the comprehensive plan in an interactive electronic platform, such as "TownSquare" software. The electronic platform will be hosted by MIG, be transferable to the City, and will be the intellectual property of the City of San Antonio. MIG will train relevant city staff in the use of the software and enable staff to make edits as needed. The document will comply with the all federal, state, and local laws, rules and regulations.

The deliverable in this task will include a draft and final web-based Comprehensive Plan supplemented by a cover memo and PowerPoint (with notes pages) detailing the findings that will be presented by staff at the City Council's Comprehensive Planning Committee. The final web-based Comprehensive Plan ("E-Plan") shall be submitted electronically to the City and in PDF format.

City's Responsibility: City staff will provide one consolidated and internally confirmed set of comments from City staff, CPAB and confirmed decision makers, on the draft web-based Comprehensive Plan to the MIG Team. The MIG Team will then update the web-based Comprehensive Plan to address and reflect City staff comments and direction.

DPCD will facilitate the formal approval process and will manage all related public hearings. Any and all printed material will be provided by the City. All public hearing expenses related to the approval process will be paid by the City.

3.3.6 Required Comprehensive Plan Meetings

MIG Team's Responsibility: To ensure maximum budget efficiency, the City will work to schedule "meeting windows" where members of the MIG Team can attend multiple meetings/events on the same day or on back-to-back days. City staff will be present at all workshops and meetings. A member of the MIG Team will be present at the following workshops and meetings (note: the MIG Team can facilitate and/or attend additional workshops and meetings based upon discussion and approval from City staff):

- In-person meetings with Staff – **up to 6**
- Virtual meetings with Staff – **up to 8**
- Co-facilitate large-scale City-wide open houses – **2**
- Virtual meetings/presentations with topic-specific expert groups for policy paper development (e.g., conference calls and/or WebEx) – **up to 15**
- In-person meeting/presentations to the Comprehensive Planning Committee of the City Council – **up to 4**
- Virtual meetings/presentations to the Comprehensive Plan Advisory Board (e.g., conference calls and/or WebEx) – **up to 6**
- Meetings/presentations to the Comprehensive Plan Citizen Committee – **0** *(A member of the MIG can attend if there is budget available, upon approval by the City)*
- Planning Commission study sessions – **0** *(A member of the MIG can attend if there is budget available, upon approval by the City)*
- City Council public hearings (attended only by City Staff) – **0** *(A member of the MIG can attend if there is budget available, upon approval by the City)*

The afore-mentioned meetings will total 10 in-person and 29 virtual. The estimated/preferred formats are listed above. MIG and the City may mutually agree to change the specific format of meetings as needed, but will not exceed 10 in-person and 29 virtual.

City's Responsibility:

- Securing locations, inviting attendees and preparing staff reports for all meetings and public hearings.
- Leading all meetings and public hearings not attended by MIG or Ximenes & Associate.
- Preparing brief summaries of each meeting and public hearing.

3.3.7 Project Management

MIG Team's Responsibilities: MIG will have a lead role managing the process to ensure the project remains on budget and schedule. This task accounts for MIG's project management and coordination (emails, calls, data transfers, etc.) with both City staff and the subconsultant team.

3. 4 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed $250,000 as total compensation, to be paid to Consultant as follows:

4.2 Invoices shall be submitted monthly for work performed. Invoice shall be accompanied by progress report of accomplishments and work products within the period. If progress is satisfactory within each invoice period, according to work plan, payment will be issued.

4.3 Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio,

Texas 78283-3976, with a copy to City of San Antonio, Planning and Community Development Department, Attention: Rudy Nino, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing in accordance with Article XVI, Amendments.

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

V. OWNERSHIP OF DOCUMENTS

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

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

5.3 City shall own all right, title and interest in all intellectual property delivered by the Consultant under this Agreement, including, without limitation, all text, drawings, graphs, tables, photographs, illustrations and other content in fulfillment of this Agreement and related documentation developed by the Consultant for the City (collectively, "Work Product"). All such Work Product shall be considered "Works Made for Hire" (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of City. Consultant hereby assigns to City for no additional consideration, all worldwide right, title, and interest that it may possess in such Work Product including, but not limited to, all intellectual property rights thereto and Consultant shall execute such further assurances evidencing such assignment as City may require from time to time. Upon request, Consultant will take such steps as are reasonably necessary to enable City, at City's cost and expense, to carry out the intent of the above assignment and to record such assignment.

VI. RECORDS RETENTION

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

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

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

VII. TERMINATION

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

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

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

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

7.3.2 Bankruptcy or selling substantially all of company's assets

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

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
7.4.2 Failing to perform or failing to comply with any covenant herein required
7.4.3 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

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

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

VIII. NOTICE

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

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

If intended for Consultant, to:
Daniel Iacofano
CEO/Principal
MIG, Inc.
421 Sixth Street # 1
San Antonio, Texas 78215

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Planning and Community Development Department, which shall be clearly labeled "Comprehensive Plan Consulting Services Phase II" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with

copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Planning and Community Development Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	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 $100,000
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) To be maintained and in effect for no less	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall

than two years subsequent to the completion of the professional services	become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as <u>additional insureds</u> by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

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

- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

XI. INDEMNIFICATION

11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to**

any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

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

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

XII. ASSIGNMENT AND SUBCONTRACTING

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

12.2 It is City's understanding and this Agreement is made in reliance thereon that Consultant intends to use the following subcontractors in the performance of this Agreement: Parsons Brinckerhoff, EPS and Ximenes & Associate. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

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

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

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

XIII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall

be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

A. SBEDA Program

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

B. Definitions

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

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

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

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

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

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

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

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

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

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

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

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

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

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

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than $1/16^{th}$ 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 – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

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

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

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

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

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

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

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

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

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

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

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

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

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

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

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

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

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals

that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier

Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

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

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. <u>SBEDA Program Compliance – Affirmative Procurement Initiatives</u>

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API

requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

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

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

E. Commercial Nondiscrimination Policy Compliance

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

F. Prompt Payment

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

G. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XV. CONFLICT OF INTEREST

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

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

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant and approved by the San Antonio City Council by passage of an ordinance therefore. Notwithstanding the City Manager is authorized to negotiate an amendment or extension that will cause the amendment expenditure to be no more than $50,000 without further action by the San Antonio City Council. Any such amendment shall be subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

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

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. RESERVED

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

XXVI. ENTIRE AGREEMENT

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

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

CITY OF SAN ANTONIO	**CONSULTANT** MIG, Inc.
_____ *(Signature)*	_____ *(Signature)*
Printed Name: _____	Printed Name: Daniel Iacofano
Title: _____	Title: CEO/Principal
Date: _____	Date: _____

Approved as to Form:

_____
Assistant City Attorney