

AN ORDINANCE 2010-08-19-0717

AUTHORIZING THE NEGOTIATION AND EXECUTION OF SIX ON-CALL PROFESSIONAL SERVICES AGREEMENTS WITH GEO STRATA ENVIRONMENTAL CONSULTANTS, INC.; WESTON SOLUTIONS, INC.; URS CORPORATION; POST, BUCKLEY, SCHUH, & JERNIGAN, INC.; RABA-KISTNER CONSULTANTS, INC.; AND PAPE-DAWSON ENGINEERS, INC., EACH IN THE AMOUNT NOT TO EXCEED \$750,000.00 PER YEAR FOR A ONE-YEAR CONTRACT WITH THREE OPTIONAL ONE-YEAR EXTENSIONS TO PROVIDE PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES.

* * * * *

WHEREAS, this Ordinance authorizes selection of six (6) professional engineering firms; accepts their respective proposals; and authorizes negotiation and execution of six (6) On-Call Professional Service Agreements with the selected firms for performance of on-call environmental services related to transportation, capital improvement bond related projects, and other City projects, on an as-needed basis, each in an amount not to exceed \$750,000.00 annually, with: Geo Strata Environmental Consultants, Inc.; Weston Solutions, Inc.; URS Corporation; Post, Buckley, Schuh, & Jernigan, Inc., dba PBS&J; Raba-Kistner Consultants, Inc.; and Pape-Dawson Engineers, Inc., for a term of one year, with an option to renew each, or any one of the agreements, for three optional one-year extensions under the same terms and conditions; **NOW THEREFORE**,

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

SECTION 1. The following professionals are selected, and their respective proposals accepted, in response to the City of San Antonio Request for Qualifications entitled "On-Call Professional Environmental Consulting Services (RFQ: CIMS0410)", issued by the City on April 11, 2010: Geo Strata Environmental Consultants, Inc.; Weston Solutions, Inc.; URS Corporation; Post, Buckley, Schuh, & Jernigan, Inc., dba PBS&J; Raba-Kistner Consultants, Inc.; and Pape-Dawson Engineers, Inc..

SECTION 2. The City Manager, or her designee, or the Director of Capital Improvements Management Services, or his designee, is authorized to negotiate and execute six (6) Professional Service Agreements, as recited above, each in an amount up to \$750,000.00, with each of the foregoing professional firms in comporment with agreements **Attachments A, B, C, D, E and F**, substantial copies of which are appended and incorporated herein verbatim for all purposes, which attachments incorporate terms and conditions of the RFQ, all amendments and addenda thereto, and the respective responses and pricing schedules submitted by each of the contracting firms. This Ordinance governs all contract documents. The execution authority granted by this ordinance shall expire 60 days from the effective date of this ordinance.

SECTION 3. Initially, each agreement shall be for a single annual term. Upon expiration of the initial term the Director of Capital Improvements Management Services may exercise the

City's right to execute up to three (3) optional one (1) year performance periods, with contract provisions and conditions identical to those of the first contract, and further subject to funding available. In the event the City exercises one or more optional terms, and should amendments or material modifications be made to the existing provisions, the option exercise shall require the City Council to approve such adjustments or amendments. The first performance period for each contract shall commence on or about September 1, 2010, and expire August 31, 2011. Any optional terms exercised thereafter shall commence on September 1st and terminate on August 31st of the respective calendar years.

SECTION 4. Funding for this ordinance will be identified when work orders are issued from the potential funding sources. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with Operating and/or Capital Budgets for current and future fiscal years.

SECTION 5. Payment not to exceed \$750,000.00 per contract, per year is authorized and should be encumbered with a purchase order for environmental consulting services.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation 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 7. 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 19th day of August, 2010.


M A Y O R
Julián Castro

ATTEST:

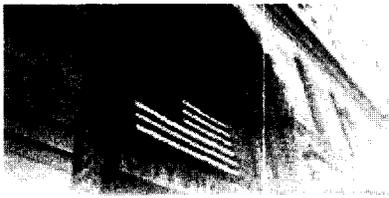


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio

Agenda Voting Results - 26

Name:	6, 7, 9, 10, 11, 13, 14, 16, 18, 19, 20, 21, 22, 23, 24A, 24B, 24C, 24D, 24E, 24F, 24G, 24H, 24I, 25, 26, 27, 28, 30A, 30B, 32						
Date:	08/19/2010						
Time:	01:11:34 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing six on-call professional services agreements for environmental consulting services with GeoStrata Environmental Consultants, Inc.; Weston Solutions, Inc.; URS Corporation; Post, Buckley, Schuh, & Jernigan, Inc.; Raba-Kistner Consultants, Inc.; and Pape-Dawson Engineers, Inc., each for a one year term in an amount up to \$750,000.00 per year with three optional one-year extensions. [Peter Zaroni, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10	x					

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL PROFESSIONAL ENVIRONMENTAL
CONSULTING SERVICES
GEO STRATA ENVIRONMENTAL CONSULTANTS, INC.**

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. 2010-08-19-_____ passed and approved on the 19th day of August, 2010 and Geo Strata Environmental Consultants, Inc., a Texas corporation, by and through Suzanne Green, Principal (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
2. Exhibit II, Addendum I, issued April 30, 2010.
3. Exhibit III, consultant’s price schedule
4. Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

Referenced Documents: Further, Geo Strata Environmental Consultants, Inc., responses to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFQ and its addendum govern Geo Strata Environmental Consultants, Inc responses; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

As authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work.

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:

“CIMS” is defined as the Capital Improvements Management Services Department of the City of San Antonio, Texas.

“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 CIMS.

II. TERM

2.1 The contract term shall be for a one (1) year term with the City having the exclusive option to extend the contract for up to three (3) additional one (1) year periods under the same terms and conditions. The contract shall commence on August 20, 2010, after approval by the City Council and upon direction from the Director. The CONSULTANT shall be retained in a standby mode. As projects are identified and funded, work to the CONSULTANT shall be authorized. The enabling Ordinance shall identify the total amount of money that may be expended under the contract awarded in connection with this RFQ. The City does not guarantee that all sums authorized will be spent under this Agreement nor that any minimum amount of work will be authorized.

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 the Attached Exhibits, referenced above, as requested by the Director in exchange for the compensation described in Article IV. Compensation.

3.2. All work performed by Consultant hereunder shall be performed to the satisfaction of Director of CIMS. 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, and as authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work. Consultant shall be paid on a periodic basis upon completion of specific tasks as assigned by the Director.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

6.1 Consultant and its 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 said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) 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 fifteen-day cure period, City shall have

the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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

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

City of San Antonio
CIMS Department
Contract Services Division
114 W. Commerce
San Antonio, Texas 78205

If intended for Consultant, to:

Geo Strata Environmental Consultants, Inc
Attn: Suzanne Green
4718 College Park
San Antonio, Texas 78249

IX. ARRA PROVISIONS

A. Source of Funds – American Recovery & Reinvestment Act

Funds for this contract may come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). The Contractor and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. The Contractor and any subcontractors shall comply with all special provisions as specified in the Act and current and future guidance.

1. Buy American Requirements

a. Use of Domestic Iron, Steel, and Manufactured Goods

Pursuant to Section 1605 of the ARRA, none of the funds appropriated or otherwise made available by the ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work, unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

b. Definitions

- (1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

c. Waiver

The ARRA provides for waiver of the Buy American requirement under three circumstances:

- (1) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (2) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent;
or
- (3) Applying the domestic preference would be inconsistent with the public interest.

Only the Federal Government can grant a waiver. However, if you believe a waiver applies, please inform the City contact person for this solicitation in writing of the reasons you think the City should seek a waiver. The City is not under any obligation to seek a waiver from the Federal Government, and does not represent by this provision that it will do so. Therefore, you are still required to certify that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or risk your offer being rejected.

d. International Agreements

- (1) Section 1605(d) of the ARRA provides that the Buy American requirement shall be applied in a manner consistent with U.S. obligations under international agreements.
- (2) Under the United States-European Communities Exchange of Letters (May 15, 1995), the City of San Antonio must grant to European Community ("EC") suppliers of goods and services, including construction services, treatment no less favorable than for out-of-city suppliers.
- (3) EC member states include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.
- (4) General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:
 - i. The restrictions attached to Federal funds to states for mass transit and highway projects;
 - ii. Dredging.

e. Certification of Compliance with Buy American Provisions

By signing and submitting this document, you are hereby certifying that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or that the source of your materials or goods come from an EC member state. If your materials or goods come from an EC member state, indicate the state here: _____

2. Job Creation and Retention

Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

- a. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- b. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- c. "Outlying areas" means:
 - (1) Commonwealths.
 - (i) Puerto Rico.
 - (ii) The Northern Mariana Islands;
 - (2) Territories.
 - (i) American Samoa.
 - (ii) Guam.

(iii) U.S. Virgin Islands; and

(3) Minor outlying islands.

- (i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

3. Access to Contractor Records

Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

4. Anti-discrimination and Equal Opportunity Provisions

All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s)

of Insurance to the City’s CIMS Department, which shall be clearly labeled “On-Call Professional Environmental Consulting Services” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s CIMS 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 whereupon 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers’ Compensation	Statutory
2. Employers’ Liability	\$1,000,000/\$1,000,000/\$1,000,000
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. Explosion, Collapse, Underground.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicle	Combined Single Limit for Bodily Injury and Property damage of \$1,000,000 per occurrence; \$5,000,000 General Aggregate,

c. Hired Vehicles d. MCS-90 endorsement	or its equivalent in Umbrella or Excess Liability Coverage.
5. Pollution Legal Liability	\$5,000,000

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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: CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days 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.

10.6 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.

10.7 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.

10.8 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.

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

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.

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

XI. INDEMNIFICATION

11.1 **The CONSULTANT, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO**

CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The 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 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.4 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.

11.5 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: Adams Environmental; MS Engineering, LLC; Vortex Drilling; Xenco Laboratories. 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. Notwithstanding the foregoing, changes may be made to Consultant’s SBEDA Plan with the written approval of Director and City’s SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

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 respondent 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)

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City’s Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

14.2 SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.

14.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant’s proposal for this project Agreement.

14.6 For this Agreement, the Parties agree that:

14.6.1 The terms of the City’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance

(collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and

14.6.2 The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.3 Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Consultant’s SBEDA Plan shall constitute a material breach of the SBEDA Program and this Agreement.

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

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

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

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

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

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

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

14.8.1 Terminate this Agreement for default;

14.8.2 Suspend this Agreement for default;

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

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

14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

14.11 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a consultant violates the SBEDA Program. The Managing Department Director shall make a recommendation

regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

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

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and

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

- (i) subject Consultant to any of the remedies listed above; and/or
- (ii) result in a new bid or proposal request of the Agreement that was considered for extension.

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 it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

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

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of

any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties. The RFQ and its addendum govern Consultant's response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
Exhibit II, Addendum I, issued April 30, 2010.
Exhibit III, Consultant's price schedule
Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

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

Geo Strata Environmental Consultants,
Inc.

(Signature)

Printed Name: _____
Title: _____
Date: _____

(Signature)

Printed Name: **Suzanne Green**
Title: _____
Date: _____

Approved as to Form:
Michael D. Bernard
City Attorney

By: Chris J. Hebner
Assistant City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL PROFESSIONAL ENVIRONMENTAL
CONSULTING SERVICES
WESTON SOLUTIONS, INC.**

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. 2010-08-19-_____ passed and approved on the 19th day of August, 2010 and Weston Solutions, Inc., a Pennsylvania corporation, by and through Susan Litherland, Senior Vice President (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
2. Exhibit II, Addendum I, issued April 30, 2010.
3. Exhibit III, consultant’s price schedule
4. Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

Referenced Documents: Further, Weston Solutions, Inc., response to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFQ and its addendum govern Weston Solutions, Inc., response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

As authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work.

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:

“CIMS” is defined as the Capital Improvements Management Services Department of the City of San Antonio, Texas.

“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 CIMS.

II. TERM

2.1 The contract term shall be for a one (1) year term with the City having the exclusive option to extend the contract for up to three (3) additional one (1) year periods under the same terms and conditions. The contract shall commence on August 20, 2010, after approval by the City Council and upon direction from the Director. The CONSULTANT shall be retained in a standby mode. As projects are identified and funded, work to the CONSULTANT shall be authorized. The enabling Ordinance shall identify the total amount of money that may be expended under the contract awarded in connection with this RFQ. The City does not guarantee that all sums authorized will be spent under this Agreement nor that any minimum amount of work will be authorized.

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 the Attached Exhibits, referenced above, as requested by the Director in exchange for the compensation described in Article IV. Compensation.

3.2. All work performed by Consultant hereunder shall be performed to the satisfaction of Director of CIMS. 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, and as authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work. Consultant shall be paid on a periodic basis upon completion of specific tasks as assigned by the Director.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

6.1 Consultant and its 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 said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) 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 fifteen-day cure period, City shall have

the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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

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

City of San Antonio
CIMS Department
Contract Services Division
114 W. Commerce
San Antonio, Texas 78205

If intended for Consultant, to:

Weston Solutions, Inc.
Attn: Bruce Wik
70 NE Loop 410, Suite 600
San Antonio, Texas 78216

IX. ARRA PROVISIONS

A. Source of Funds – American Recovery & Reinvestment Act

Funds for this contract may come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). The Contractor and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. The Contractor and any subcontractors shall comply with all special provisions as specified in the Act and current and future guidance.

1. Buy American Requirements

a. Use of Domestic Iron, Steel, and Manufactured Goods

Pursuant to Section 1605 of the ARRA, none of the funds appropriated or otherwise made available by the ARRA may be used for a project for the

construction, alteration, maintenance, or repair of a public building or public work, unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

b. Definitions

- (1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

c. Waiver

The ARRA provides for waiver of the Buy American requirement under three circumstances:

- (1) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

- (2) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- (3) Applying the domestic preference would be inconsistent with the public interest.

Only the Federal Government can grant a waiver. However, if you believe a waiver applies, please inform the City contact person for this solicitation in writing of the reasons you think the City should seek a waiver. The City is not under any obligation to seek a waiver from the Federal Government, and does not represent by this provision that it will do so. Therefore, you are still required to certify that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or risk your offer being rejected.

d. International Agreements

- (1) Section 1605(d) of the ARRA provides that the Buy American requirement shall be applied in a manner consistent with U.S. obligations under international agreements.
- (2) Under the United States-European Communities Exchange of Letters (May 15, 1995), the City of San Antonio must grant to European Community ("EC") suppliers of goods and services, including construction services, treatment no less favorable than for out-of-city suppliers.
- (3) EC member states include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.
- (4) General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:
 - i. The restrictions attached to Federal funds to states for mass transit and highway projects;
 - ii. Dredging.

e. Certification of Compliance with Buy American Provisions

By signing and submitting this document, you are hereby certifying that the iron, steel or manufactured goods you are offering under this procurement

meet the ARRA's Buy American requirements, or that the source of your materials or goods come from an EC member state. If your materials or goods come from an EC member state, indicate the state here: _____

2. Job Creation and Retention

Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

- a. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- b. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- c. "Outlying areas" means:
 - (1) Commonwealths.
 - (i) Puerto Rico.
 - (ii) The Northern Mariana Islands;
 - (2) Territories.
 - (i) American Samoa.
 - (ii) Guam.
 - (iii) U.S. Virgin Islands; and
 - (3) Minor outlying islands.
 - (i) Baker Island.

- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

3. Access to Contractor Records

Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

4. Anti-discrimination and Equal Opportunity Provisions

All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's CIMS Department, which shall be clearly labeled "On-Call Professional Environmental Consulting Services" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not

accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's CIMS 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 whereupon 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground. 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicle c. Hired Vehicles d. MCS-90 endorsement 	Combined Single Limit for Bodily Injury and Property damage of \$1,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
5. Pollution Legal Liability	\$5,000,000

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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: CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days 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.

10.6 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.

10.7 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.

10.8 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.

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

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.

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

XI. INDEMNIFICATION

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

11.2 The 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 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.4 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.

11.5 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: Adams Environmental, Inc.; Alamo Analytical Laboratories, LTD; Arias and Associates; Gruene Environmental Construction, LLC; HVJ Associates, Inc.; Vortex Drilling, Inc. 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. Notwithstanding the foregoing, changes may be made to Consultant's SBEDA Plan with the written approval of Director and City's

SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

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 respondent 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)

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City’s Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

14.2 SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.

14.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant’s proposal for this project Agreement.

14.6 For this Agreement, the Parties agree that:

14.6.1 The terms of the City’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and

14.6.2 The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.3 Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

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

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

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

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

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

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

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

14.8 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the

SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Consultant materially breaches the requirements of the SBEDA Program:

14.8.1 Terminate this Agreement for default;

14.8.2 Suspend this Agreement for default;

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

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

14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

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

Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

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

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and

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

(i) subject Consultant to any of the remedies listed above; and/or

(ii) result in a new bid or proposal request of the Agreement that was considered for extension.

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 subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any

provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties. The RFQ and its addendum govern Consultant's response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;

Exhibit II, Addendum I, issued April 30, 2010.

Exhibit III, Consultant's price schedule

Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

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

Weston Solutions, Inc.

(Signature)

Printed Name: _____
Title: _____
Date: _____

(Signature)

Printed Name: **Susan Litherland**
Title: **Senior Vice President**
Date: _____

Approved as to Form:
Michael D. Bernard
City Attorney

By: Chris J. Hebner
Assistant City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL PROFESSIONAL ENVIRONMENTAL
CONSULTING SERVICES
URS CORPORATION**

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. 2010-08-19-_____ passed and approved on the 19th day of August, 2010 and URS Corporation, a California corporation, by and through Leo M.J. Dielmann, III, Vice President (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
2. Exhibit II, Addendum I, issued April 30, 2010.
3. Exhibit III, consultant’s price schedule
4. Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

Referenced Documents: Further, URS Corporation’s response to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFQ and its addendum govern URS Corporation’s response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

As authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work.

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:

“CIMS” is defined as the Capital Improvements Management Services Department of the City of San Antonio, Texas.

“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 CIMS.

II. TERM

2.1 The contract term shall be for a one (1) year term with the City having the exclusive option to extend the contract for up to three (3) additional one (1) year periods under the same terms and conditions. The contract shall commence on August 20, 2010, after approval by the City Council and upon direction from the Director. The CONSULTANT shall be retained in a standby mode. As projects are identified and funded, work to the CONSULTANT shall be authorized. The enabling Ordinance shall identify the total amount of money that may be expended under the contract awarded in connection with this RFQ. The City does not guarantee that all sums authorized will be spent under this Agreement nor that any minimum amount of work will be authorized.

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 the Attached Exhibits, referenced above, as requested by the Director in exchange for the compensation described in Article IV. Compensation.

3.2. All work performed by Consultant hereunder shall be performed to the satisfaction of Director of CIMS. 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, and as authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work. Consultant shall be paid on a periodic basis upon completion of specific tasks as assigned by the Director.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

6.1 Consultant and its 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 said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) 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 fifteen-day cure period, City shall have

the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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

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

City of San Antonio
CIMS Department
Contract Services Division
114 W. Commerce
San Antonio, Texas 78205

If intended for Consultant, to:

URS Corporation
Attn: Sandeep Nayyar
9901 IH 10 West, Suite 350
San Antonio, Texas 78230

IX. ARRA PROVISIONS

A. Source of Funds – American Recovery & Reinvestment Act

Funds for this contract may come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). The Contractor and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. The Contractor and any subcontractors shall comply with all special provisions as specified in the Act and current and future guidance.

1. Buy American Requirements

a. Use of Domestic Iron, Steel, and Manufactured Goods

Pursuant to Section 1605 of the ARRA, none of the funds appropriated or otherwise made available by the ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work, unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

b. Definitions

- (1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

c. Waiver

The ARRA provides for waiver of the Buy American requirement under three circumstances:

- (1) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (2) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent;
or
- (3) Applying the domestic preference would be inconsistent with the public interest.

Only the Federal Government can grant a waiver. However, if you believe a waiver applies, please inform the City contact person for this solicitation in writing of the reasons you think the City should seek a waiver. The City is not under any obligation to seek a waiver from the Federal Government, and does not represent by this provision that it will do so. Therefore, you are still required to certify that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or risk your offer being rejected.

d. International Agreements

- (1) Section 1605(d) of the ARRA provides that the Buy American requirement shall be applied in a manner consistent with U.S. obligations under international agreements.
- (2) Under the United States-European Communities Exchange of Letters (May 15, 1995), the City of San Antonio must grant to European Community ("EC") suppliers of goods and services, including construction services, treatment no less favorable than for out-of-city suppliers.
- (3) EC member states include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.
- (4) General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:
 - i. The restrictions attached to Federal funds to states for mass transit and highway projects;
 - ii. Dredging.

e. Certification of Compliance with Buy American Provisions

By signing and submitting this document, you are hereby certifying that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or that the source of your materials or goods come from an EC member state. If your materials or goods come from an EC member state, indicate the state here: _____

2. Job Creation and Retention

Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

- a. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- b. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- c. "Outlying areas" means:
 - (1) Commonwealths.
 - (i) Puerto Rico.
 - (ii) The Northern Mariana Islands;
 - (2) Territories.
 - (i) American Samoa.
 - (ii) Guam.

(iii) U.S. Virgin Islands; and

(3) Minor outlying islands.

- (i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

3. Access to Contractor Records

Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

4. Anti-discrimination and Equal Opportunity Provisions

All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s)

of Insurance to the City’s CIMS Department, which shall be clearly labeled “On-Call Professional Environmental Consulting Services” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s CIMS 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 whereupon 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers’ Compensation	Statutory
2. Employers’ Liability	\$1,000,000/\$1,000,000/\$1,000,000
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. Explosion, Collapse, Underground.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicle	Combined Single Limit for Bodily Injury and Property damage of \$1,000,000 per occurrence; \$5,000,000 General Aggregate,

c. Hired Vehicles d. MCS-90 endorsement	or its equivalent in Umbrella or Excess Liability Coverage.
5. Pollution Legal Liability	\$5,000,000

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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: CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers’ compensation and professional liability policies;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days 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.

10.6 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.

10.7 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.

10.8 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.

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

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.

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

XI. INDEMNIFICATION

11.1 **The CONSULTANT, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO**

CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The 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 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.4 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.

11.5 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: Abasolo Archaeological Consultants; Alamo Analytical Laboratories, Ltd. dba Chemron; Short-line Corporation dba American Signal Equipment; Arias &

Associates; FarrWest Environmental Supply, Inc.; Gruene Environmental Construction, LLC; HVJ Associates, Inc.; Vortex Drilling, Inc.. 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. Notwithstanding the foregoing, changes may be made to Consultant's SBEDA Plan with the written approval of Director and City's SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

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 respondent 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)**

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City’s Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

14.2 SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.

14.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant’s proposal for this project Agreement.

14.6 For this Agreement, the Parties agree that:

14.6.1 The terms of the City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Agreement by reference; and

14.6.2 The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.3 Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

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

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

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

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

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

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

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

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

14.8.1 Terminate this Agreement for default;

14.8.2 Suspend this Agreement for default;

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

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

14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

14.11 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA

Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a consultant violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

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

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and

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

- (i) subject Consultant to any of the remedies listed above; and/or
- (ii) result in a new bid or proposal request of the Agreement that was considered for extension.

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 it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

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

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall

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

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties. The RFQ and its addendum govern Consultant's response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

- Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
- Exhibit II, Addendum I, issued April 30, 2010.
- Exhibit III, Consultant's price schedule
- Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

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

URS Corporation

(Signature)

Printed Name: _____
 Title: _____
 Date: _____

(Signature)

Printed Name: **Leo M.J. Dielmann, III**
 Title: **Vice President**
 Date: _____

Approved as to Form:
Michael D. Bernard
City Attorney

By: Chris J. Hebner
Assistant City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL PROFESSIONAL ENVIRONMENTAL
CONSULTING SERVICES
POST, BUCKLEY, SCHUH & JERNIGAN, INC., DBA PBS&J**

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. 2010-08-19-_____ passed and approved on the 19th day of August, 2010 and Post, Buckley, Schuh and Jernigan, Inc. dba PBS&J, a Florida corporation, by and through John L. German, Vice President (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
2. Exhibit II, Addendum I, issued April 30, 2010.
3. Exhibit III, consultant’s price schedule
4. Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

Referenced Documents: Further, PBS&J’s response to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFQ and its addendum govern PBS&J’s response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

As authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work.

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:

“CIMS” is defined as the Capital Improvements Management Services Department of the City of San Antonio, Texas.

“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 CIMS.

II. TERM

2.1 The contract term shall be for a one (1) year term with the City having the exclusive option to extend the contract for up to three (3) additional one (1) year periods under the same terms and conditions. The contract shall commence on August 20, 2010, after approval by the City Council and upon direction from the Director. The CONSULTANT shall be retained in a standby mode. As projects are identified and funded, work to the CONSULTANT shall be authorized. The enabling Ordinance shall identify the total amount of money that may be expended under the contract awarded in connection with this RFQ. The City does not guarantee that all sums authorized will be spent under this Agreement nor that any minimum amount of work will be authorized.

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 the Attached Exhibits, referenced above, as requested by the Director in exchange for the compensation described in Article IV. Compensation.

3.2. All work performed by Consultant hereunder shall be performed to the satisfaction of Director of CIMS. 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, and as authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work. Consultant shall be paid on a periodic basis upon completion of specific tasks as assigned by the Director.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

6.1 Consultant and its 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 said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) 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 fifteen-day cure period, City shall have

the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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

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

City of San Antonio
CIMS Department
Contract Services Division
114 W. Commerce
San Antonio, Texas 78205

If intended for Consultant, to:

PBS&J.
Attn: Ryan K. Bayer
10100 Reunion Place, Suite 850
San Antonio, Texas 78216

IX. ARRA PROVISIONS

A. Source of Funds – American Recovery & Reinvestment Act

Funds for this contract may come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). The Contractor and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. The Contractor and any subcontractors shall comply with all special provisions as specified in the Act and current and future guidance.

1. Buy American Requirements

a. Use of Domestic Iron, Steel, and Manufactured Goods

Pursuant to Section 1605 of the ARRA, none of the funds appropriated or otherwise made available by the ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work, unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

b. Definitions

- (1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

c. Waiver

The ARRA provides for waiver of the Buy American requirement under three circumstances:

- (1) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (2) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent;
or
- (3) Applying the domestic preference would be inconsistent with the public interest.

Only the Federal Government can grant a waiver. However, if you believe a waiver applies, please inform the City contact person for this solicitation in writing of the reasons you think the City should seek a waiver. The City is not under any obligation to seek a waiver from the Federal Government, and does not represent by this provision that it will do so. Therefore, you are still required to certify that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or risk your offer being rejected.

d. International Agreements

- (1) Section 1605(d) of the ARRA provides that the Buy American requirement shall be applied in a manner consistent with U.S. obligations under international agreements.
- (2) Under the United States-European Communities Exchange of Letters (May 15, 1995), the City of San Antonio must grant to European Community ("EC") suppliers of goods and services, including construction services, treatment no less favorable than for out-of-city suppliers.
- (3) EC member states include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.
- (4) General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:
 - i. The restrictions attached to Federal funds to states for mass transit and highway projects;
 - ii. Dredging.

e. Certification of Compliance with Buy American Provisions

By signing and submitting this document, you are hereby certifying that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or that the source of your materials or goods come from an EC member state. If your materials or goods come from an EC member state, indicate the state here: _____

2. Job Creation and Retention

Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

- a. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- b. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- c. "Outlying areas" means:
 - (1) Commonwealths.
 - (i) Puerto Rico.
 - (ii) The Northern Mariana Islands;
 - (2) Territories.
 - (i) American Samoa.
 - (ii) Guam.

(iii) U.S. Virgin Islands; and

(3) Minor outlying islands.

- (i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

3. Access to Contractor Records

Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

4. Anti-discrimination and Equal Opportunity Provisions

All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s)

of Insurance to the City’s CIMS Department, which shall be clearly labeled “On-Call Professional Environmental Consulting Services” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s CIMS 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 whereupon 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, by companies authorized and admitted 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 \$1,000,000/\$1,000,000/\$1,000,000
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. Explosion, Collapse, Underground.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicle	Combined Single Limit for Bodily Injury and Property damage of \$1,000,000 per occurrence; \$5,000,000 General Aggregate,

c. Hired Vehicles d. MCS-90 endorsement	or its equivalent in Umbrella or Excess Liability Coverage.
5. Pollution Legal Liability	\$5,000,000

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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: CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers’ compensation and professional liability policies;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days 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.

10.6 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.

10.7 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.

10.8 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.

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

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.

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

XI. INDEMNIFICATION

11.1 **The CONSULTANT, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO**

CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The 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 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.4 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.

11.5 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: Alamo Analytical Laboratories, LTD; ALEO Environmental Enterprises, Inc.; STC Environmental Services, Inc.; Vortex Drilling, Inc.. 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. Notwithstanding the foregoing, changes may be made to Consultant’s SBEDA Plan with the written approval of Director and City’s SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

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 respondent 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)

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City’s Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

14.2 SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.

14.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant’s proposal for this project Agreement.

14.6 For this Agreement, the Parties agree that:

14.6.1 The terms of the City’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance

(collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and

14.6.2 The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.3 Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Consultant’s SBEDA Plan shall constitute a material breach of the SBEDA Program and this Agreement.

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

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

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

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

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

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

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

14.8.1 Terminate this Agreement for default;

14.8.2 Suspend this Agreement for default;

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

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

14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

14.11 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a consultant violates the SBEDA Program. The Managing Department Director shall make a recommendation

regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

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

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and

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

- (i) subject Consultant to any of the remedies listed above; and/or
- (ii) result in a new bid or proposal request of the Agreement that was considered for extension.

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 it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

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

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of

any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties. The RFQ and its addendum govern Consultant's response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
Exhibit II, Addendum I, issued April 30, 2010.
Exhibit III, Consultant's price schedule
Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

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

Post, Buckley, Schuh and Jernigan, Inc.,
dba PBS&J

(Signature)

Printed Name: _____
Title: _____
Date: _____

(Signature)

Printed Name: **John L. German**
Title: **Vice President**
Date: _____

Approved as to Form:
Michael D. Bernard
City Attorney

By: Chris J. Hebner
Assistant City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL PROFESSIONAL ENVIRONMENTAL
CONSULTING SERVICES
RABA-KISTNER CONSULTANTS, INC.**

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. 2010-08-19-_____ passed and approved on the 19th day of August, 2010 and Raba-Kistner Consultants, Inc., a Texas corporation, by and through Steven E. Jones, Senior Vice President (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
2. Exhibit II, Addendum I, issued April 30, 2010.
3. Exhibit III, consultant’s price schedule
4. Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

Referenced Documents: Further, Raba-Kistner Consultants, Inc., response to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFQ and its addendum govern Raba-Kistner Consultants, Inc., response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

As authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work.

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:

“CIMS” is defined as the Capital Improvements Management Services Department of the City of San Antonio, Texas.

“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 CIMS.

II. TERM

2.1 The contract term shall be for a one (1) year term with the City having the exclusive option to extend the contract for up to three (3) additional one (1) year periods under the same terms and conditions. The contract shall commence on August 20, 2010, after approval by the City Council and upon direction from the Director. The CONSULTANT shall be retained in a standby mode. As projects are identified and funded, work to the CONSULTANT shall be authorized. The enabling Ordinance shall identify the total amount of money that may be expended under the contract awarded in connection with this RFQ. The City does not guarantee that all sums authorized will be spent under this Agreement nor that any minimum amount of work will be authorized.

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 the Attached Exhibits, referenced above, as requested by the Director in exchange for the compensation described in Article IV. Compensation.

3.2. All work performed by Consultant hereunder shall be performed to the satisfaction of Director of CIMS. 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, and as authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work. Consultant shall be paid on a periodic basis upon completion of specific tasks as assigned by the Director.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

6.1 Consultant and its 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 said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) 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 fifteen-day cure period, City shall have

the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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

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

City of San Antonio
CIMS Department
Contract Services Division
114 W. Commerce
San Antonio, Texas 78205

If intended for Consultant, to:

Raba-Kistner Consultants, Inc.
Attn: Steven E. Jones
12821 W. Golden Lane
San Antonio, Texas 78249

IX. ARRA PROVISIONS

A. Source of Funds – American Recovery & Reinvestment Act

Funds for this contract may come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). The Contractor and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. The Contractor and any subcontractors shall comply with all special provisions as specified in the Act and current and future guidance.

1. Buy American Requirements

a. Use of Domestic Iron, Steel, and Manufactured Goods

Pursuant to Section 1605 of the ARRA, none of the funds appropriated or otherwise made available by the ARRA may be used for a project for the

construction, alteration, maintenance, or repair of a public building or public work, unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

b. Definitions

- (1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

c. Waiver

The ARRA provides for waiver of the Buy American requirement under three circumstances:

- (1) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

- (2) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- (3) Applying the domestic preference would be inconsistent with the public interest.

Only the Federal Government can grant a waiver. However, if you believe a waiver applies, please inform the City contact person for this solicitation in writing of the reasons you think the City should seek a waiver. The City is not under any obligation to seek a waiver from the Federal Government, and does not represent by this provision that it will do so. Therefore, you are still required to certify that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or risk your offer being rejected.

d. International Agreements

- (1) Section 1605(d) of the ARRA provides that the Buy American requirement shall be applied in a manner consistent with U.S. obligations under international agreements.
- (2) Under the United States-European Communities Exchange of Letters (May 15, 1995), the City of San Antonio must grant to European Community ("EC") suppliers of goods and services, including construction services, treatment no less favorable than for out-of-city suppliers.
- (3) EC member states include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.
- (4) General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:
 - i. The restrictions attached to Federal funds to states for mass transit and highway projects;
 - ii. Dredging.

e. Certification of Compliance with Buy American Provisions

By signing and submitting this document, you are hereby certifying that the iron, steel or manufactured goods you are offering under this procurement

meet the ARRA's Buy American requirements, or that the source of your materials or goods come from an EC member state. If your materials or goods come from an EC member state, indicate the state here: _____

2. Job Creation and Retention

Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

- a. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- b. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- c. "Outlying areas" means:
 - (1) Commonwealths.
 - (i) Puerto Rico.
 - (ii) The Northern Mariana Islands;
 - (2) Territories.
 - (i) American Samoa.
 - (ii) Guam.
 - (iii) U.S. Virgin Islands; and
 - (3) Minor outlying islands.
 - (i) Baker Island.

- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

3. Access to Contractor Records

Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

4. Anti-discrimination and Equal Opportunity Provisions

All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's CIMS Department, which shall be clearly labeled "On-Call Professional Environmental Consulting Services" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not

accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s CIMS 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 whereupon 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers’ Compensation	Statutory
2. Employers’ Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground. 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicle c. Hired Vehicles d. MCS-90 endorsement 	Combined Single Limit for Bodily Injury and Property damage of \$1,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
5. Pollution Legal Liability	\$5,000,000

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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: CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days 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.

10.6 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.

10.7 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.

10.8 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.

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

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.

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

XI. INDEMNIFICATION

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

11.2 The 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 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.4 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.

11.5 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: ACI Group, LLC, dba aci consulting, inc.; Gruene Environmental Construction, LLC; Lockwood, Andrews & Newman, Inc.; Michael Baker, Inc.; Preservation Matters; San Antonio Testing Laboratory, Inc.; Vickery & Associates, Inc.; Vortex Drilling, Inc.; Williams CAD Consulting. 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. Notwithstanding the

foregoing, changes may be made to Consultant's SBEDA Plan with the written approval of Director and City's SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

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 respondent 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)**

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City’s Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

14.2 SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.

14.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant’s proposal for this project Agreement.

14.6 For this Agreement, the Parties agree that:

14.6.1 The terms of the City’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and

14.6.2 The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.3 Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

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

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

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

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

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

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

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

14.8 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the

SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Consultant materially breaches the requirements of the SBEDA Program:

14.8.1 Terminate this Agreement for default;

14.8.2 Suspend this Agreement for default;

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

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

14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

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

Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

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

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and

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

- (i) subject Consultant to any of the remedies listed above; and/or
- (ii) result in a new bid or proposal request of the Agreement that was considered for extension.

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 subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any

provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties. The RFQ and its addendum govern Consultant's response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;

Exhibit II, Addendum I, issued April 30, 2010.

Exhibit III, Consultant's price schedule

Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

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

Raba-Kistner Consultants, Inc.

(Signature)

(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: **Steven E. Jones**
Title: **Senior Vice President**
Date: _____

Approved as to Form:
Michael D. Bernard
City Attorney

By: Chris J. Hebner
Assistant City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL PROFESSIONAL ENVIRONMENTAL
CONSULTING SERVICES
PAPE-DAWSON ENGINEERS, INC.**

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. 2010-08-19-_____ passed and approved on the 19th day of August, 2010 and Pape-Dawson Engineers, Inc., a Texas corporation, by and through Cara C. Tackett, Vice President (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;
2. Exhibit II, Addendum I, issued April 30, 2010.
3. Exhibit III, consultant’s price schedule
4. Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

Referenced Documents: Further, Pape-Dawson Engineers, Inc., response to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFQ and its addendum govern Pape-Dawson Engineers, Inc., response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

As authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work.

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:

“CIMS” is defined as the Capital Improvements Management Services Department of the City of San Antonio, Texas.

“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 CIMS.

II. TERM

2.1 The contract term shall be for a one (1) year term with the City having the exclusive option to extend the contract for up to three (3) additional one (1) year periods under the same terms and conditions. The contract shall commence on August 20, 2010, after approval by the City Council and upon direction from the Director. The CONSULTANT shall be retained in a standby mode. As projects are identified and funded, work to the CONSULTANT shall be authorized. The enabling Ordinance shall identify the total amount of money that may be expended under the contract awarded in connection with this RFQ. The City does not guarantee that all sums authorized will be spent under this Agreement nor that any minimum amount of work will be authorized.

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 the Attached Exhibits, referenced above, as requested by the Director in exchange for the compensation described in Article IV. Compensation.

3.2. All work performed by Consultant hereunder shall be performed to the satisfaction of Director of CIMS. 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, and as authorized by the Ordinance, annual budget sums shall not exceed \$750,000.00 unless City Council action is taken to amend the enabling Ordinance. In regard to compensation, City does not guarantee any minimum volume of work. Consultant shall be paid on a periodic basis upon completion of specific tasks as assigned by the Director.

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

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

6.1 Consultant and its 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 said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) 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 fifteen-day cure period, City shall have

the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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

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

City of San Antonio
CIMS Department
Contract Services Division
114 W. Commerce
San Antonio, Texas 78205

If intended for Consultant, to:

Pape-Dawson Engineers, Inc.
Attn: Cara C. Tackett
555 E. Ramsey
San Antonio, Texas 78216

IX. ARRA PROVISIONS

A. Source of Funds – American Recovery & Reinvestment Act

Funds for this contract may come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). The Contractor and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. The Contractor and any subcontractors shall comply with all special provisions as specified in the Act and current and future guidance.

1. Buy American Requirements

a. Use of Domestic Iron, Steel, and Manufactured Goods

Pursuant to Section 1605 of the ARRA, none of the funds appropriated or otherwise made available by the ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work, unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

b. Definitions

- (1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

c. Waiver

The ARRA provides for waiver of the Buy American requirement under three circumstances:

- (1) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (2) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent;
or
- (3) Applying the domestic preference would be inconsistent with the public interest.

Only the Federal Government can grant a waiver. However, if you believe a waiver applies, please inform the City contact person for this solicitation in writing of the reasons you think the City should seek a waiver. The City is not under any obligation to seek a waiver from the Federal Government, and does not represent by this provision that it will do so. Therefore, you are still required to certify that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or risk your offer being rejected.

d. International Agreements

- (1) Section 1605(d) of the ARRA provides that the Buy American requirement shall be applied in a manner consistent with U.S. obligations under international agreements.
- (2) Under the United States-European Communities Exchange of Letters (May 15, 1995), the City of San Antonio must grant to European Community ("EC") suppliers of goods and services, including construction services, treatment no less favorable than for out-of-city suppliers.
- (3) EC member states include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.
- (4) General Exceptions: The following restrictions and exceptions are excluded from U.S. obligations under international agreements:
 - i. The restrictions attached to Federal funds to states for mass transit and highway projects;
 - ii. Dredging.

e. Certification of Compliance with Buy American Provisions

By signing and submitting this document, you are hereby certifying that the iron, steel or manufactured goods you are offering under this procurement meet the ARRA's Buy American requirements, or that the source of your materials or goods come from an EC member state. If your materials or goods come from an EC member state, indicate the state here: _____

2. Job Creation and Retention

Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

- a. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- b. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- c. "Outlying areas" means:
 - (1) Commonwealths.
 - (i) Puerto Rico.
 - (ii) The Northern Mariana Islands;
 - (2) Territories.
 - (i) American Samoa.
 - (ii) Guam.

(iii) U.S. Virgin Islands; and

(3) Minor outlying islands.

- (i) Baker Island.
- (ii) Howland Island.
- (iii) Jarvis Island.
- (iv) Johnston Atoll.
- (v) Kingman Reef.
- (vi) Midway Islands.
- (vii) Navassa Island.
- (viii) Palmyra Atoll.
- (ix) Wake Atoll.

3. Access to Contractor Records

Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

4. Anti-discrimination and Equal Opportunity Provisions

All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s)

of Insurance to the City’s CIMS Department, which shall be clearly labeled “On-Call Professional Environmental Consulting Services” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s CIMS 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 whereupon 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers’ Compensation	Statutory
2. Employers’ Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground. 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicle 	Combined Single Limit for Bodily Injury and Property damage of \$1,000,000 per occurrence; \$5,000,000 General Aggregate,

c. Hired Vehicles d. MCS-90 endorsement	or its equivalent in Umbrella or Excess Liability Coverage.
5. Pollution Legal Liability	\$5,000,000

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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: CIMS Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers’ compensation and professional liability policies;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days 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.

10.6 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.

10.7 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.

10.8 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.

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

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.

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

XI. INDEMNIFICATION

11.1 **The CONSULTANT, whose work product is the subject of this Agreement for professional services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO**

CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The 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 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.4 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.

11.5 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: Addula Consulting Engineers, LLC; Alamo Analytical Laboratories, LTD dba Chemron; Aleo Environmental Enterprises, Inc.; Ecological Communications

Corporation. 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. Notwithstanding the foregoing, changes may be made to Consultant’s SBEDA Plan with the written approval of Director and City’s SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

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 respondent 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)

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City’s Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

14.2 SBEDA Enterprise (“SE”) – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.

14.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant’s proposal for this project Agreement.

14.6 For this Agreement, the Parties agree that:

14.6.1 The terms of the City’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance

(collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and

14.6.2 The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.3 Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

14.6.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Consultant’s SBEDA Plan shall constitute a material breach of the SBEDA Program and this Agreement.

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

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

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

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

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

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

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

14.8.1 Terminate this Agreement for default;

14.8.2 Suspend this Agreement for default;

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

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

14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

14.11 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a consultant violates the SBEDA Program. The Managing Department Director shall make a recommendation

regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

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

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and

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

(i) subject Consultant to any of the remedies listed above; and/or

(ii) result in a new bid or proposal request of the Agreement that was considered for extension.

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 it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

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

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of

any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties. The RFQ and its addendum govern Consultant's response; this Professional Services Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

Exhibit I, a Request for Qualifications (RFQ) for On-Call Professional Environmental Consulting Services (RFQ: CIMS0410), issued by the City on April 11, 2010;

Exhibit II, Addendum I, issued April 30, 2010.

Exhibit III, Consultant's price schedule

Exhibit IV, Copy of enabling Ordinance No.2010-08-19-_____.

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

Pape-Dawson Engineers, Inc.

(Signature)

(Signature)

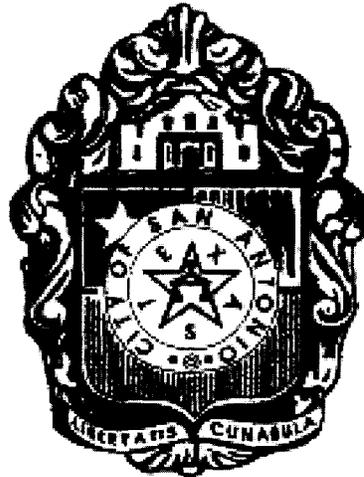
Printed Name: _____
Title: _____
Date: _____

Printed Name: **Cara C. Tackett**
Title: **Vice President**
Date: _____

Approved as to Form:
Michael D. Bernard
City Attorney

By: Chris J. Hebner
Assistant City Attorney

CITY OF SAN ANTONIO
CAPITAL IMPROVEMENTS
MANAGEMENT SERVICES DEPARTMENT



**REQUEST FOR QUALIFICATIONS:
ON-CALL PROFESSIONAL
ENVIRONMENTAL CONSULTING SERVICES
(RFQ: CIMS0410)**

**SUBMITTAL DEADLINE
MAY 12, 2010 AT 3:00 P.M. LOCAL TIME**

TABLE OF CONTENTS

<u>SECTION</u>	<u>Page #</u>
I. Background	1
II. Scope of Services	1
III. Term of Contract(s)	3
IV. Pre-Submittal Conference	3
V. Statement of Qualifications Evaluation Criteria	3
E. Small Business Economic Development Advocacy (SBEDA)	4
VI. Amendments to RFQ	5
VII. Submission Instructions	5
VIII. Submittal Document Requirements	6
IX. Selection Process and Schedule	7
X. Award of Contract and Reservation of Rights	8
XI. Restrictions on Communication	9
ATTACHMENTS, EXHIBITS, FORMS & INSTRUCTIONS:	
Form 1 – Respondent Submittal Cover / Signature Sheet	RFQ Attachment 1
Form 2 – Submittal Checklist and Table of Content	RFQ Attachment 2
Form 3 – Respondent General Questionnaire	RFQ Attachment 3
Form 4 – Discretionary Contracts Disclosure Form and Instructions	RFQ Attachment 4
Form 5 – Litigation Disclosure Form	RFO Attachment 5
Form 6 – SBEDA Program, Good Faith Effort Plan and Letter of Intent Forms	RFQ Attachment 6
Contract Document Template (posted separately and incorporated through reference)	RFQ Exhibit A

REQUEST FOR QUALIFICATIONS

CITY OF SAN ANTONIO PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES

I. Background

The City of San Antonio Capital Improvements Management Services Department (Department) is issuing this RFQ (Request for Qualifications) to obtain qualified as needed professional environmental consulting services. These contracts are commonly referred to as standby agreements. All firms responding must be qualified and have licensed, trained, and/or certified personnel in accordance with Federal and State regulations to provide various environmental consulting services, or must joint venture or subcontract with a qualified firm to provide the services proposed.

The City anticipates various projects will arise under authority of a standby contract resulting from this RFQ. One or more contracts will be awarded. Work will consist of various environmental consulting services, such as environmental assessments, subsurface investigations, asbestos sampling, monitoring well and soil boring installation, monitoring well plugging, site remediation and remediation oversight, as may be required to support City construction projects, property acquisitions or any other City's project. Various City Departments may fund the work conducted under the resultant standby agreement by requesting services through the Department.

For purposes of satisfying requirements of the Texas Professional Services Procurement Act, this RFQ is designed to anticipate responses from professional CONSULTANTS who may be engineers, architects, geologists or who may otherwise be covered by the Act. Where engineering / architectural/survey professionals are concerned, the City's review of qualifications must consider highest competency as the primary criterion.

Minimally, the City requires the services of a firm that employs professionals with sufficient credentials to perform environmental consulting. Basically, such a consultant may employ professional geologists, scientists, professional engineers, geoscientists and chemists. Certifications may include, but not be limited to, Corrective Action Project Manager, Registered Environmental Manager, Licensed Geoscientist, and Licensed Professional Engineer.

II. Scope of Services:

The selected firm(s) will perform environmental consulting activities including, but not limited to, Phase I Environmental Site Assessments (ESAs), Phase II ESAs, Limited Phase II ESAs, Phase III ESAs (including Remediation Oversight), Affected Property Assessment Reports (APARs), Spill Prevention Control & Countermeasure (SPCC) Plans, Brownfield Site Assessments, Leaking Petroleum Storage Tank (LSPT) assessments, asbestos consulting, and NEPA (National Environmental Policy Act) consulting.

Phase I ESAs:

Conduct Phase I ESAs on proposed City property, and/or right-of-way (ROW), and/or proposed City construction projects in accordance with ASTM E1527-05 or USEPA All Appropriate Inquiry (AAI) requirements.

Phase II ESAs:

1. Perform a Subsurface investigation on proposed City property or ROW to identify the presence or absence of potential contaminants, and to delineate the vertical and horizontal extent of contamination, if encountered. The investigation must be conducted in accordance with Federal, State and Local regulations and applicable industry standards.

2. Work may involve drilling below ground surface to various utility depths and collecting soil and groundwater samples. Some soil borings may be converted into temporary and / or permanent monitoring wells for groundwater monitoring purposes.
3. Any samples (soil, water and air) must be analyzed by an authorized TCEQ laboratory and consultant shall render conclusions and recommendations.
4. A final report outlining the findings and recommendations shall be prepared based on the results of the subsurface investigation. This report shall meet minimum ASTM D6235 requirements and applicable industry standards.

Phase III ESAs:

1. Development of a waste management plan specifications to address health and safety issues and waste management procedures associated with impacted construction projects.
2. Phase III ESAs are the remediation phase and may involve, but not be limited to waste management plans, environmental closure by statistical analyses and risk-based assessment and additional investigation in accordance with all applicable Federal, State, and Local environmental regulations.
3. Oversight of a remediation activity by others to ensure that work is being conducted appropriately, which may include preparing, managing and signing waste manifests.
4. Conduct air monitoring for potential contaminants associated with the construction project that may have a potential impact to construction workers and surrounding environment.
5. A final report documenting field activities, air monitoring results, confirmation sampling, soil quantities removed, conclusions and recommendations shall be prepared for each remediation project.

Spill Prevention, Control, and Countermeasure (SPCC) Plan:

Assist with the preparation, inspection and certification of SPCC plans for City facilities in accordance with the Oil Pollution Prevention Regulation under the authority of the federal Clean Water Act requirements.

Brownfield Site Assessments:

Conduct Phase I ESAs in accordance with AAI (All Appropriate Inquiry) requirements. Prepare Quality Assurance Project Plans (QAPP) for phase II subsurface investigation reports. Prepare and submit reports with findings and recommendations associated with investigative results.

Leaking Petroleum Storage Tank (LPST) Assessments:

Monitoring, reporting, and site closure in accordance with all applicable Texas Commission on Environmental Quality (TCEQ) regulations.

Asbestos Consulting:

1. Perform asbestos surveys and collect bulk samples per state requirements.
2. Perform asbestos oversight of asbestos abatement activities and perform required air monitoring activities.
3. Assist with preparation of specifications, provide environmental oversight and conduct air monitoring activities of asbestos cement pipe removal activities for City construction projects.

NEPA Consulting:

Perform an assessment of the environmental impacts of a proposed project as may be required to comply with the National Environmental Policy Act of 1969, which requirements may include, but not limited to, environmental assessments (EA), categorical exclusions (CE), programmatic categorical exclusions (PCEs), Section 404 Clean Water Act compliance, cultural resources and historical preservation pursuant to Section 106 of the National Historic Preservation Act and the Texas Antiquities Code, and Endangered Species Act compliance. Documents will be prepared primarily for transportation improvement projects in accordance with Federal Highway Administration (FHWA) and Texas Department of Transportation (TxDOT) requirements.

III. TERM OF CONTRACT

One or more contracts may be awarded in response to this RFQ. The selected CONSULTANT(s) shall be retained in a standby mode. As projects are identified and funded, work to the selected CONSULTANT(s) shall be authorized. The contract term is anticipated to commence in August of 2010 and shall be for a one (1) year term with the City having the exclusive option to extend the contract(s) for up to two (2) additional one (1) year periods at the same terms and conditions.

The enabling Ordinance shall identify the total amount of money that may be expended under the contract(s) awarded in connection with this RFQ. The City does not guarantee that all sums authorized will be spent under the Standby Agreement(s) nor that any minimum amount of work will be authorized. Unless the specific project requirements are determined to preclude a specific consultant from consideration, if more than one contract is awarded, the Department shall attempt to allocate the work evenly according to competency.

IV. PRE-SUBMITTAL CONFERENCE

A Pre-submission Conference will be held on **Tuesday, April 20, 2010 at 9:30 a.m. at the Municipal Plaza Building, B Room, located at 114 West Commerce St, San Antonio, Texas 78205.** Respondents are encouraged to prepare and submit their questions in writing to the staff contact person listed in Article XI of the RFQ three (3) calendar days in advance of the Pre-Submission Conference in order to expedite the proceedings (such that staff may review the questions received and be able to respond verbally during the pre-submission conference).

City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on the City's website at <http://epay.sanantonio.gov/RFPListings/>. Attendance at the Pre-Submittal Conference is optional, but strongly encouraged.

This meeting place is accessible to disabled persons. The Municipal Plaza Building is wheelchair accessible. The accessible entrance is located at 114 W. Commerce. Accessible parking spaces are located at City Hall, 100 Military Plaza. Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City.

V. STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

Firms interested in providing the services included in this RFQ must submit responses limited to 10 pages (not including forms and attachments) that address the following issues:

- A. Experience & Qualifications of the Prime Firm (25%)
Discuss the experience and qualifications of the prime firm in providing the services outlined in this RFQ. For each project listed, please provide:
 - i. Description of the project
 - ii. Role of the firm
 - iii. Project Cost
 - iv. Project start and completion dates
 - v. Project owner
 - vi. Indicate number of years experience providing services outlined in Section II.

- vii. Relevant experience with projects of similar size and scope your firm has provided over the past (5) years.
- viii. Please specify experience with public entity clients, especially large municipalities
- ix. If Consultant has provided services to the City in the past, identify the name of the project and the department for which services were provided.
- x. Reference information for each project in the following format:
 Name of Reference: _____
 Reference Phone Number: _____
 Reference E-mail: _____
- xi. Financial stability of prime firm

B. Experience & Qualifications of Key Personnel and Subconsultants (30%)

Discuss the experience and qualifications of the specific project team members in providing the services outlined in this RFQ (particularly the Project Manager, and the managers of the key disciplines) including subconsultant experience. Describe your approach to overall team formation and coordination of team members and provide a team organization chart (included as Tab 9 to the submittal). The organizational chart should identify the roles of all key personnel.

For each key person identified, please provide the following information:

- i. Indicate the total years of experience working for consultant, primary work assignment for projects outlined in this RFQ.
- ii. Indicate their length of time with the firm and current office location.
- iii. Detail relevant experience with projects of similar size and scope (public entities, risk assessment consulting, SPCC, LPST, Brownfields, asbestos consulting, and NEPA consulting). References for each project should be provided in the format below:
 Name of Reference: _____
 Reference Phone Number: _____
 Reference E-mail: _____
- iv. Provide resumes of key personnel to be involved in this RFQ.

C. Project Approach/Management Plan (15%)

- i. Indicate the percentage of time to be devoted to the projects outlined in this RFQ.
- ii. Describe your firm's project management approach and team organization for the provision of the services outlined in this RFQ.
- iii. Detail the current capacity of key team individuals and the firm's capabilities to complete the services outlined herein.
- iv. Briefly describe the firm's plans for quality control, dispute resolution, and safety management in providing the services outlined in this RFQ.

D. Overall Evaluation of Team's Ability to Provide Required Services (10%)

This is to be determined by the selection panel members. No submittal response is required.

SUBTOTAL - MAXIMUM 80 POINTS

E. Small Business Economic Development Advocacy Program (SBEDA) (20 points)

Firms should complete, sign and submit the Good Faith Effort Plan Form 5

- 1. A maximum of percentage (10) points for Local Business Enterprises (LBEs):
 - a) Prime contractors who have a local branch office will receive six percent (6%) of the selection points.

- b) Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors (i.e. – 50% to local = 5 points).
- 2. A maximum of five percentage (5%) points for companies designated as Historically Underutilized Enterprises (HUEs).
 - a) Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs (i.e. – 50% to HUEs = 2.5 points).
 - b) HUEs must be certified by the City’s certifying agency or approved by the Director of Economic Development or designee.
- 3. A maximum of five percentage (5%) points for Prime Contractor compliance with the SBEDA Program policy:
 - a) One percent (1%) for submission/approval of the Good Faith Effort Plan.
 - b) One percent (1%) for meeting/exceeding the MBE goal.
 - c) One percent (1%) for meeting/exceeding the WBE goal.
 - d) One percent (1%) for meeting/exceeding the AABE goal.
 - e) One percent (1%) for meeting/exceeding the SBE goal.

TOTAL MAXIMUM - 100 POINTS

VI. AMENDMENTS TO RFQ

Changes, amendments, or written responses to questions received in compliance with Section XI, Restrictions on Communication may be posted on the City’s website at:

<http://epay.sanantonio.gov/RFPListings/>

It is Respondent’s responsibility to review this site and ascertain whether any amendments have been made prior to submission of a Statement of Qualifications (SOQ). A Respondent who does not have access to the Internet, must notify City in accordance with Section XI, Restrictions on Communication, that Respondent wishes to receive copies of changes, amendments, or written responses to questions by mail.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFQ, and changes to the RFQ – if any – shall be made in writing only.

VII. SUBMISSION INSTRUCTIONS

When submitting a bid, proposal or SOQ in person, visitors to City Hall must allow time for security measures. Visitors to City Hall will be required to enter through the east side of the building. The public will pass through a metal detector and x-ray machine located in the lobby. All packages, purses and carried items will be scanned during regular business hours of 7 a.m. to 7 p.m. After the public proceeds through the metal detector, they will sign in and receive a visitor’s badge. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Security will meet the visitor in the basement with a hand scanner.

Interested firms should submit Statements of Qualifications which include a one-page Executive Summary plus a maximum length of fifteen (15) pages using not less than 10 point font to address the RFQ evaluation criteria (excluding required forms and attachments identified in this RFQ). Resumes for each key team member shall be limited to a maximum length of two pages (no company information) and should be incorporated as Tab 9 at the end of the RFQ. Respondent shall submit one (1) original, signed in ink, and six (6) copies, and one (1) compact disk (CD) in Adobe PDF format of the Statement of

Qualifications in a sealed package, clearly marked on the front of the package "RFQ: ON-CALL PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES." All submittals must be received in the City Clerk's Office **no later than 3:00 P.M. local time on May 12, 2010** at the address indicated below.

<p><u>Mailing Address:</u> City Clerk's Office Attn: CIMS, Contract Services RFQ: On-Call Professional Environmental Consulting Services P.O. Box 839966 San Antonio, Texas 78283-3966</p>	<p><u>Physical Address:</u> City Clerk's Office Attn: CIMS, Contract Services RFQ: On-Call Professional Environmental Consulting Services 100 Military Plaza City Hall, 2nd Floor, San Antonio, Texas 78205</p>
--	--

Any submittal received after this time shall not be considered. Submittals sent by facsimile or email will not be accepted.

Responses to the solicitation should be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2" x 11") with criteria information will be counted. Pages that have project photos, charts, and graphs will be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages will not be counted if they do not contain submittal information. Resumes should not include project pictures or general firm information. The use of recycled paper is encouraged. Three-ring binders are permitted, and with regards to other types of binding, plastic (not metal) spiral, or "comb" binding is recommended. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 10-point type. All pages shall be numbered. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites, or URLs shall not be included as part of the proposal, other than the CD specified above. Each submittal must include the sections and attachments in the sequence listed in the RFQ Section VIII, Submittal Document Requirements, and each section must be divided by tabs and indexed in the Submittal Checklist and Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal.

VIII. SUBMITTAL DOCUMENT REQUIREMENTS

Respondent's submittal shall include the following items in the following sequence:

- A. Executive Summary – Respondents shall include a one page introductory executive summary for the Submittal (Statement of Qualifications or SOQ).
- B. Submittal Cover/Signature Sheet (Form #1) – Respondent shall complete and sign this form. Respondent must complete and include the Submittal Cover/Signature Sheet with submittal. The Submittal Cover/Signature Sheet must be signed by a person, or persons, authorized to bind the entity, or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint Ventures require signatures from all firms participating in the Joint Venture. Joint Ventures are required to provide legal proof of the joint venture such as a Joint Venture Agreement as an attachment to their submittal. (indexed or labeled as Tab "1" in submittal)
- C. Submittal Checklist (Form #2) - Respondent shall complete this form which is to be used as the Table of Contents for its submittal. The checklist shall be indexed or labeled as Tab "2" in submittal.
- D. General Questionnaire (Form #3), indexed or labeled as Tab "3" in submittal.

- E. Discretionary Contracts Disclosure Form (Form #4) - All proposed parties to the contract with the City shall complete and return this form with the submission. Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. This form should be indexed or labeled as Tab "4" in submittal.
- F. Litigation Disclosure Form (Form #5) – Completed Litigation Disclosure form as found in RFQ Attachment 5 and additional pages for explanation, if necessary, indexed or labeled as Tab "5" in submittal.
- G. Completed Good Faith Effort Plan and Letters of Intent (Forms 6 and 6-A) - labeled or indexed as Tab "6" in submittal.
- H. Statement of Qualifications – Respondent shall provide a Statement of Qualifications in narrative form that covers all items in Section V. This section is limited to 15 pages not including forms and attachments and should be labeled or indexed as Tab "7" in submittal.
- I. Team Organizational Chart: - Organizational Chart should include all key personnel and indicate the proposed roles for each person in the completion of the types of services outlined in this RFQ and should be labeled as Tab"8" in the submittal.
- J. Resumes: (Optional) labeled as Tab "9" in the submittal. Resumes for each key team member shall be limited to a maximum length of two pages (no company information).
- K. Letters of Reference: (Optional) labeled as Tab "10" in the submittal – Respondent may provide a maximum of 5 letters of reference.
- L. Proof of Insurability (Indexed and labeled as Tab "11" in submittal): Submit a letter from insurance provider stating provider's commitment to insure the Respondent for the types of coverages and at the levels specified in the attached Contract Document Template (RFQ Exhibit A) if awarded a contract in response to this RFQ. Respondent shall also submit a copy of their current insurance certificate.
- M. Financial Information: Submit a copy of Respondent's three most recent annual financial statements, prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant. Place documents as Tab "12" within Respondent's **ORIGINAL** proposal only. Additional copies are not required.

Respondent is expected to examine this RFQ carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE-REFERENCED DOCUMENTS SHALL RESULT IN THE RESPONDENT'S SUBMITTAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

IX. SELECTION PROCESS AND SCHEDULE

The City will conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFQ according to the criteria set forth in Section IV above. The City will appoint a selection committee to perform the evaluation. Each submittal will be analyzed to determine overall responsiveness and qualifications under the RFQ. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents will be interviewed and scored based upon criteria to be determined by the selection committee. If interviews are to be held, an interview invitation letter will provide the evaluation criteria to be used. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent.

The following tentative schedule has been prepared for this project.

Pre-Submission Conference	April 20, 2010
Deadline for Submittal of Written Questions	April 23, 2010
Submittals Due	May 12, 2010
Anticipated City Council Consideration	June 17, 2010

Final approval of a selected firm or firms is subject to the action of the San Antonio City Council.

X. AWARD OF CONTRACT & RESERVATION OF RIGHTS

- A. City reserves the right to award one, more than one, or no contract(s) in response to this RFQ.
- B. The Contracts, if awarded, will be awarded to the Respondents whose submittals are deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFQ on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFQ, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFQ, and reissue a subsequent solicitation, and/or remedy technical errors in the RFQ process.
- E. City will require the selected Respondent(s) to execute a contract in substantially the form as attached with the City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFQ does not commit City to enter into a Contract, award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract.
- G. The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City. The City administers its design and construction management through an Internet-based management system. All vendors will be required to use the City's portal system and submit schedules using Primavera Project Manager 5.X or Primavera Contractor 4.1 or above.
- H. Conflicts of Interest. Respondent 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 the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An 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: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; or 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.
- I. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City's Ethics Code. (Discretionary Contracts Disclosure – Form 4 in RFQ).
- J. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City

shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

- K. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission by accessing either of the following web addresses:

http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm
<http://www.ethics.state.tx.us/forms/CIQ.pdf>.

Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor with questions regarding the statute or form.

- L. All submittals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- M. Any cost or expense incurred by the Respondent that is associated with the preparation of the submittal, the Pre-Submittal Conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

XI. RESTRICTIONS ON COMMUNICATION

- A. Respondents are prohibited from communicating with elected City officials and their staff regarding the RFQ or submittals from the time the RFQ has been released until the contract is posted as a City Council agenda item. Respondents are prohibited from communicating with City employees from the time the RFQ has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFQ and/or Statement of Qualifications submitted by Respondents. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's submittal from consideration. Exceptions to the restrictions on communication with City employees include:
1. Respondents may ask verbal questions concerning this RFQ at the Pre-Submittal Conference.
 2. Respondents may submit written questions concerning this RFQ to the Staff Contact Person listed in the address below until 4:00 P.M. Central Time on April 23, 2010. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by electronic mail or by fax to:

Diane Vasquez, Contract Officer
City of San Antonio, Capital Improvements Management Services Department,
Contract Services Division
diana.vasquez@sanantonio.gov or to fax # (210) 207-5859

However, questions sent by certified mail, return receipt requested, will also be accepted and should be addressed to:

Diane Vasquez, Contract Officer
City of San Antonio, Capital Improvements Management Services Department,
Contract Services Division
114 W. Commerce, Room 900
San Antonio, TX 78205

For technical questions regarding issues with the City's internet or accessibility of forms, contact Diane Vasquez via phone at 207-5872.

3. Respondents and/or their agents are encouraged to contact the Small Business Outreach Office of the Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy Program policy and/or completion of the Good Faith Effort Plan form. The point of contact is Ms. Brenda Navarro. Ms. Navarro may be reached by telephone at (210) 207-5442 or by e-mail at brenda.navarro@sanantonio.gov. Contacting her or her office regarding this RFQ after the submittal due date is not permitted.
 4. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from such selection committee meetings as it deems in its best interests.
- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City.



CITY OF SAN ANTONIO
P. O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966

FORM 1
SUBMITTAL COVER / SIGNATURE SHEET

RFQ FIRST ADVERTISEMENT DATE:	April 11, 2010	Request For Qualification Title: ON-CALL PROFESSIONAL ENVIRONMENTAL SERVICES
DATE OF CLOSING:	May 12, 2010	ID# RFQ – CIMS0410
TIME OF CLOSING:	(No later than) 3:00 P.M. Local Time	DEPARTMENT / DIVISION: Capital Improvement Management Services Environmental Management Division
SUBMIT TO:	City of San Antonio Office of the City Clerk 100 Military Plaza 2 nd Floor, City Hall San Antonio, TX 78205	

READ AND SIGN BELOW. UNSIGNED COVER SHEETS WILL NOT BE ACCEPTED.

Legal Name of Firm:	
Address:	
City:	
State:	Zip Code:
Contact Person:	
Office Phone Number:	Alternate Phone Number:
E-Mail Address:	Fax Number:
<p>I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, information contained in this submittal reflects accurately data regarding my organization/firm, work to be performed, and estimates of planned/delivered services. By signing this cover sheet, the undersigned agrees that, if awarded a contract in response to this RFQ, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's Submittal and during the Solicitation process.</p> <p>The undersigned certifies that he/she is authorized to bind the organization. All provisions in Respondent's submittal, shall remain valid for 120 days following the deadline date for submissions or, if Respondent is awarded a contract, throughout the entire term of the contract.</p>	

Signature of Authorized Individual

Typed Name of Authorized Individual

Date

Typed Title of Authorized Individual

FORM 2
SUBMITTAL CHECKLIST AND TABLE OF CONTENTS

The materials and information listed on this checklist shall be submitted as part of the submittal. Failure to submit any of the requested materials or provide adequate explanation may eliminate the submittal from consideration.

Materials shall be included in the submittal in the order identified on the checklist. Identify the corresponding page numbers in the space provided.

Page No.	Form No.	Form Title
	No Form	Executive Summary
	Form 1	Submittal Cover Sheet / Signature Page – Indexed as Tab “1”
	Form 2	Submittal Checklist (Table of Contents) – Indexed as Tab “2”
	Form 3	General Questionnaire – Indexed as Tab “3”
	Form 4	Discretionary Contracts Disclosure Form – Indexed as Tab “4”
	Form 5	Litigation Disclosure Form – Indexed as Tab “5”
	Form 6	Good Faith Effort Plan – Indexed as Tab “6”
	Form 6A	Letter of Intent to be submitted for each subconsultant – Included in Tab “6”
	No Form	Statement of Qualifications in narrative form that covers items in Section V of the RFQ. This portion is limited to 15 pages not including forms and attachments – Indexed as Tab “7”
	No Form	Team Organizational Chart - Indexed as Tab “8”
	No Form	Resumes – Indexed as Tab “9”. Resumes for each key team member shall be limited to a maximum length of two pages (no company information) .
	No Form	Letters of Reference (Optional) – Indexed as Tab “10” – Respondent may provide a maximum of 5 letters of reference.
	No Form	Proof of Insurability – Indexed as Tab “11”
	No Form	Three most recent Audited Financial Statements – Included in Original Submittal only , Indexed as Tab “12”.
Submission includes one original proposal signed in ink, six printed copies and one PDF version on CD Check Here: _____		

**FORM 3
GENERAL QUESTIONNAIRE**

1. **Respondent Information:** Provide the following information regarding the Respondent. (NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #1.2. If Joint Venture or Partnership, attach Joint Venture or Partnership Agreement.)

Respondent Name: _____
(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

e-mail address: _____

List here, any other names under which Respondent has operated within the last 10 years.
(add space as needed)

1.2 **Business Structure:** Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship

If checked, list Assumed Name, if any: _____

Partnership

Corporation If checked, check one: For-Profit Nonprofit

Also, check one: Domestic Foreign

Other If checked, list business structure: _____

1.3 **Ownership:** Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes No

1.4 Is Respondent authorized and/or licensed to do business in Texas?

Yes No If "Yes", list authorizations/licenses.

1.5 Where is the Respondent's corporate headquarters located? _____

1.6 **Local Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes No If "Yes", respond to **a.** and **b.** below:

a. How long has the Respondent conducted business from its San Antonio office?

Years _____ Months _____

b. State the number of full-time employees at the San Antonio office. _____

1.7 **County Operation:** If the Respondent does not have a San Antonio office, does the Respondent have an office located in Bexar County, Texas?

Yes No If "Yes", respond to **a.** and **b.** below:

a. How long has the Respondent conducted business from its Bexar County office?

Years _____ Months _____

b. State the number of full-time employees at the Bexar County office. _____

1.8 **Organizational Chart:** Attach a one page copy of your business organizational chart, complete with names and titles, identify as Attachment A.

1.9 Firm's Availability: When can firm start work? _____

Is there any concurrent commitment that would impede progress on this project, i.e. other jobs?

Yes No If yes, describe:

1.10 **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes No

If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

1.11 **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No

If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

- 1.12 **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?
Yes No

If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

2. EXPERIENCE

- 2.1 How many years has your current organization been doing business as a professional environmental engineering/consulting firm? _____ years.
- 2.2 How many years have you been doing professional environmental engineering/consulting work under previous business name(s)? _____ years.

FORM 4
City of San Antonio
Discretionary Contracts Disclosure*

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

Discretionary Contracts Disclosure Form is posted as a separate document or may be downloaded at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.

Instructions for completing the Discretionary Contracts Disclosure form are listed below:

1. Download form and complete all fields. Note: All fields must be completed prior to submitting the form.
2. Click on the "Print" button and place the copy in proposal response as indicated in the Proposal Checklist.

PROVIDE ONLY WITH ORIGINAL SUBMITTAL

RFQ ATTACHMENT 5
FORM 5
LITIGATION DISCLOSURE

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes No

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes No

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes No

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

RFQ ATTACHMENT 6

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM POLICY AND GOOD FAITH EFFORT PLAN FORM SMALL BUSINESS PROGRAM

DO NOT SUBMIT THESE INSTRUCTIONS

1. **Small Business Participation**

Pursuant to Ordinance No. 2007-04-12-0396, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the Small Business policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

2. **DEFINITIONS** related to the Small Business Program Provisions:

- a. **Small Business Program**: The Small Business Economic Development Advocacy ("SBEDA") Program governed by this ordinance and managed by the SMALL BUSINESS Program Office.
- b. **Small Business Enterprises (SBE)**: a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for a small business. All firms meeting these thresholds will be considered an SBE.
- c. **Local Business Enterprise (LBE)**: A corporation, partnership, sole proprietorship, or other legal entity which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County for use at the local branch office.
- d. **Minority Business Enterprise (MBE)**: A sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. Minority group member(s) include African-Americans; Hispanic Americans; Asian-Pacific Americans; Asian-Indian Americans; American Indians; and Disabled Individuals. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County or the San Antonio Metropolitan Statistical Area (the SAMSA) for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBE's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE)**: A sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE's category of contracting for at least one year.
- f. **African-American Business Enterprise (AABE)**: A sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or

receives bids on or proposals for, City contracts within the AABE's category of contracting for at least on year.

3. Goals for Small Business Participation

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

MBE	31%
WBE	10%
AABE	2.2%
SBE	50%

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with **Subcontractor A** for 10% of the contract. **Subcontractor A** is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. **Subcontractor B** is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to **Subcontractor C**—a City certified SBE, MBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as an AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X's** compliance with the Small Business goals under this scenario would be as follows:

	City's Small Business Goals	Prime Contractor X's Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, Company D will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE. **Prime Contractor Y** compliance with the Small Business goals would be as follows:

	City's Small Business Goals	Prime Contractor X's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

4. Good Faith Effort Required

Submittals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which

equals or exceeds the above goals. **Any submittal that does not include the GFEP form shall be declared non-responsive, and excluded from consideration.**

5. MBE-WBE-AABE Certification Required

Only companies certified as MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

6. Small Business Program Information

Interested contractors/proposers are encouraged to contact the Small Business Outreach Office for information regarding the City's Small Business Program Policy in accordance with the City's Communication Policy outlined in the solicitation document. Please call (210) 207-3900 or FAX: (210) 207-3909.

FORM 6
GOOD FAITH EFFORT PLAN
 (Page 1 of 4)

NAME OF PROJECT: _____

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ E-mail address: _____

Is your firm certified? Yes No
 (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE- SBE CERTIFICATION NUMBER

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

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

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

Contact Person: _____

Phone Number: _____

10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

SIGNATURE OF AUTHORIZED OFFICIAL

TITLE OF OFFICIAL

DATE

PHONE

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval Denial

Action Taken: Approved Denied

DIRECTOR OF ECONOMIC DEVELOPMENT

DATE

(ATTACHMENT 6-A)
CITY OF SAN ANTONIO

LETTER OF INTENT FOR CONTRACTS
UTILIZING SMALL BUSINESS CONTRACTING GOALS

NAME OF PROJECT: _____

Name of bidder's/proposer's firm: _____

Address: _____

City: _____ State: _____ Zip: _____



Name of Subcontractor/Supplier: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Contact Person: _____

Is the above firm Certified?: Yes ___ No ___ If certified, Certification No: _____

If firm is certified, please attach a copy of the Certification Certificate with this form.

Description of work to be performed by firm:

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____
Signature of Firm's Representative Date

Title: _____

Submit this page for each Subcontractor/Supplier to be utilized on this contract/project.



**CITY OF SAN ANTONIO
REQUEST FOR QUALIFICATIONS (RFQ) FOR
ON-CALL PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES
RFQ: CIMS-0410**

ADDENDUM #1, April 30, 2010

Addendum #1 includes the responses to questions received during the Pre-Submission Conference on April 20, 2010, and questions received in writing as of the date of this Addendum.

I. QUESTIONS AND CLARIFICATIONS TO RFQ

The following questions were received regarding the City's request for financial information:

1. Question: Regarding the Financial Information listed as Item 'M' on page 7 of the RFQ. We are a small business and we do not have any audited annual financial statements, due to the high cost to have them prepared. Previous RFQ's for other agencies of similar type have mentioned that it would not be required as long since we are a small firm. We can however provide financial statements prepared in accordance with the requirements listed in the current RFQ. Would these unaudited financial statements be sufficient if provided?

We are a small business and this would be a hardship for us to do this in the short time-frame we have for this RFQ and the cost involved in completing that task. I am a registered tax preparer with the IRS and have been doing internal audits and financial statements as well as Corporate and Individual Income Tax work. I have maintained by CPE's every year in this area. Can you tell me if it will be a requirement to get a contract with the City of San Antonio?

Question: Regarding the following requirement in the above referenced RFQ: We have not paid for a full audit (an approximately \$50,000 expense for our size firm) because, as a privately-held firm, we are therefore not required to do so. However, we can provide our three most recent annual financial statements with a formal Compilation Letter submitted by an independent CPA who is very familiar with our operations. Will this document suffice to demonstrate the accuracy of our financial statements?

M. Financial Information: Submit a copy of Respondent's three most recent annual financial statements, prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant. Place documents as Tab "12" within Respondent's **ORIGINAL** proposal only. Additional copies are not required.

Response: Respondent's must submit the three most recent annual financial statements even if those financial statements are not audited. **Audited** financial statements are preferred.

2. Question: I work for a small, woman-owned consulting firm here in San Antonio. We specialize in public outreach and are currently supporting public involvement efforts for the US 281 Environmental Impact Statement. While reading through the City of San Antonio's RFQ for On-Call Professional Environmental Services, I noticed there is a need for NEPA Consulting Services. Since NEPA actions usually require associated public involvement, will this type of support be included under this RFQ?

Response: Under this contract, NEPA services may be required for City projects. Public involvement is a NEPA requirement, and the selected consultant/s will be required to provide this service dependent on the complexity of the project.

3. Question: Who are the current contract holders for the City of San Antonio's Environmental Services?

Response: The current contracts are with Medina Environmental, Geo Strata Environmental, URS, and Weston Resources.

4. Question: Will the City accept certifications from the North Central Texas Regional Certification Agency (NCTRCA)?

Response: No, the City only recognizes current certification(s) from the South Central Texas Regional Certification Agency (SCTRCA). Firms that are not certified may still complete the application and submit to the SCTRCA office. However, the SCTRCA has a reciprocal agreement for firms that are certified through the following entities: Southwest Minority Supplier Development Council, Texas Comptroller of Public Accounts, Small Business Administration Section 8a, Women's Business Enterprise Alliance certification or a certificate issued by any TUCP member. Once application has been submitted, the Small Business Office can prioritize and expedite the application.

The following questions were received regarding the Statement of Qualifications page limitation:

5. Question: On Page 3 of the submittal, it indicates that the responses are limited to 10 pages, but later on page 5, it indicates a maximum length of 15 pages. Which is the correct page limit?

Question: Section V states that the page limit for responses is 10 pages, while Section VII and VIII-H states 15 pages, can you confirm the page limit?

Question: There appears to be a page limit discrepancy for the Statement of Qualifications. Page 3, Section V indicates a 10 page limit, whereas Page 5, last paragraph and Page 12, Form 2 indicates a 15 page limit.

Section V, page 3 of the RFQ states that the Statement of Qualifications section should be limited to 10 pages. However, Section VIII, Part H, page 7 of the RFQ states that the Statement of Qualifications section should be limited to 15 pages. Which is the correct page limit?

Response: The page limit is 15 pages. Sections V, VII and VIII-H, should indicate the same page limit of 15 pages not including forms and attachments. See also Section II below.

6. Question: Is it the intent of the CITY that any Consultant awarded the contract fully indemnify and defend the CITY at Consultants expense, from claims, judgments, losses, etc., that ... *arise in any part from the negligence of CITY...*, even if the City is the proximate cause of the damage, loss or injury?

Response: The language in the draft contract template will be revised to provide for comparative indemnity, please see Section II of Addendum below.

7. Question: May this article's *Draft Contract* language be mutually negotiated before the execution to any final agreement?

Response: The City may engage in limited negotiation; however, if the City is unable to negotiate satisfactory terms and conditions with a recommended firm, per Article X, Section E of the RFQ, the City may terminate negotiations with that firm and commence negotiations with another firm.

The following questions were received regarding the Statement of Qualification Evaluation Criteria:

8. Question: Section V of the submittal A. Experience & Qualifications states for each project listed provide reference information for which projects are we to put the reference on;
- vii: Relevant experience
 - viii: Specific experience or
 - ix: Services to the city

Response: See revision to the RFQ below.

Question: Under Section V, Part A, is it the intent of the RFQ to request items VI –XI for each project listed or as stand alone responses for the submitting firm? Based on the requested information, it appears items VI through XI are firm qualifications rather than project-specific information.

Response: See revision to the RFQ below.

Question: Under Section V, Part A, subpart X, is the intent of the RFQ to request references for City projects requested in subpart IX or for projects discussed in subparts I through V?

Response: See revision to the RFQ below.

II. REVISIONS TO THE RFQ

1. Section II. Scope of Services, page 2, Phase III ESAs, (2), has been modified to read:

Phase III ESAs are the remediation phase and may involve, but not be limited to waste management plans, environmental remediation, environmental closure by statistical analyses and risk-based assessment, and additional investigation in accordance with all applicable Federal, State, and Local environmental regulations.

2. Section V. Statement of Qualifications Evaluation Criteria, Part A, page 3, has been deleted in it's entirety and has been replaced with:

Firms interested in providing the services included in this RFQ must submit responses limited to 15 pages (not including forms and attachments) that address the following issues:

- A. Experience & Qualifications of the Prime Firm (25%)
- 1) Please specify experience with public entity clients, especially large municipalities.
 - 2) If Consultant has provided services to the City in the past, identify the name of the project and the department for which services were provided.
 - 3) Indicate number of years experience providing services outlined in Section II.
 - 4) Discuss the experience and qualifications of the prime firm in providing the services outlined in this RFQ. For each project of similar size and scope completed over the last 5 years listed, please provide:
 - i. Description of the project
 - ii. Role of the firm
 - iii. Project Cost
 - iv. Project start and completion dates
 - v. Reference information for each project in the following format:
 - vi. Name of Reference: _____
 - vii. Reference Phone Number: _____
 - viii. Reference E-mail: _____
 - 5) Financial stability of prime firm shall be considered through submission of financial statement as requested in Section VIII.M. of the RFQ.
3. Exhibit A, Draft Contract Template, page 13, Article XI, has been deleted in its entirety and replaced with:

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

- 11.2 The CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the CONSULTANT, known to the Consultant, related to or arising out of the 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 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights contractual or otherwise, to any other person or entity.
- 11.4 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.
- 11.5 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.

END OF REVISIONS

No other items, dates, or deadlines for this RFQ are changed.