

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL SERVICES FOR ENVIRONMENTAL
REMEDATION**

STATE OF TEXAS }
COUNTY OF BEXAR }
CITY OF SAN ANTONIO }

This Professional Services Agreement for **On-Call Services for Environmental Remediation** (hereafter referred to as "this Agreement" or "the Agreement") is made and entered into in San Antonio, Bexar County, Texas, between City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

_____ **Name of Firm** _____

_____ **Address** _____

_____ **City, State & Zip Code** _____

(hereafter referred to as "Consultant"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for **On-Call Services for Environmental Remediation** as set forth herein in connection with the above designated solicitation for City.

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ARTICLE I. DEFINITIONS

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

- 1.1 “Application for Compensation” means written form for a request from Consultant, to be paid for completed Work.
- 1.2 “CCMS” means City’s Contract Management System, whereby payments made by Consultants to Sub-Consultants, said payments confirmed by Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.
- 1.3 "City" mean The City of San Antonio, Texas and its authorized representatives.
- 1.4 "City Designated Representative (ODR)" means person designated by City to act for City.
- 1.4 “Compensation” means amounts paid for services under this Agreement.
- 1.5 "Consultant" means Name of firm and its officers, partners, employees, agents and representatives, as well as all Sub-Consultants, if any, and all other persons or entities for which Consultant legally is responsible.
- 1.6 "Director" means the Director of City’s Transportation and Capital Improvements or his/her designee.
- 1.7 “Finalized Task Order” means a written agreement, authorized by both parties in the City’s Portal system and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Project as further defined herein.
- 1.8 “On-Call Contract” means a contract used by the City, through which a task order, on an as-needed basis, shall be issued for work or services, as determined by City.
- 1.9 "Plans and Specifications" means the construction documents.
- 1.10 “PRIME*Link*” means City’s internet-based project management software for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Consultant.
- 1.11 "Project" means the capital improvement/construction development undertaking of City.
- 1.12 "Proposal" means Consultant's Proposal to provide services for a project.
- 1.13 “Proposed Service Plan” means a detailed plan outlining how and when the City-requested Work or services shall be provided by the Consultant/Contractor.
- 1.14 “Proposed Task Order Request” means a request to Consultant to submit a Proposal for a specific Project, as further defined herein.

- 1.15 "SAMSA" means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.
- 1.16 "SAWS" means the San Antonio Water System, Inc.
- 1.17 "Schedule of Values" means the values allocated to materials and various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as City may require.
- 1.18 "Scope of Services" mean the services described in **Article IV Scope of Services** herein.
- 1.19 "Services" means those services described in the Scope of Services, as set out in an issued Task Order.
- 1.20 "Task Order" means a Work order issued to Consultant/Contractor setting forth the agreed to Scope of Services/Work, pricing and associated terms for an individual Project.
- 1.21 "Total Compensation" means the not-to-exceed amount of this Agreement.
- 1.22 "Work" means the services required by the issued Task Order, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Consultant or any Sub-Consultant, material suppliers or any other entities for which Consultant is responsible to fulfill Consultant's Task Order obligations.

**ARTICLE II.
COMPENSATION**

- 2.1 The Compensation for all services included in this Agreement **SHALL NOT EXCEED, (SEVEN HUNDRED FIFTY THOUSAND & NO/100 DOLLARS (\$750,000.00))**. Any extension of this Agreement, up to one (1) additional one-year "Extension Period," may increase the total amount of this Agreement to an amount not to exceed, **(ONE MILLION FIVE HUNDRED THOUSAND & NO/100 DOLLARS (\$1,500,000.00))**.
- 2.2 Consultant shall submit a Proposed Service Plan for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposed Service Plan. The City's approval shall be evidenced by a finalized Task Order executed by both parties in *PRIMELink*. Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into *PRIMELink*. Each finalized Task Order, as entered into *PRIMELink*, shall become a part of this Agreement.
 - 2.2.1 Consultant understands and agrees that City may have entered into multiple professional services agreements with other Consultants and City has the authority to assign Work/Task Orders at its sole discretion.
 - 2.2.2 Consultant understands and agrees that City makes no minimum guarantees, with regard to the amount of services, if any, Consultant may be extended under this Agreement.

- 2.3 Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the not to exceed pre-priced tasks and or hourly rates included in **Exhibit 1** hereto.

**ARTICLE III.
METHOD OF PAYMENT**

- 3.1 Payments to Consultant shall be in the amount shown on the invoices, consistent with an issued Task Order and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are judged unsatisfactory and which previously have not been approved by the Director. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.
- 3.1.1 Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Consultant's proposal/fee schedule (as shown in **Exhibit 1** hereto) and the approved Task Order.
- 3.1.2 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, with required back-up and reference to the individual Task Order, in *PRIMELink*. Entered invoices shall indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.
- 3.2 Consultant shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others, in connection with a Project and the performance of the Work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such ten-day period shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City a bona fide dispute associated with an unpaid Sub-Consultant and its provided service. Consultant shall include a provision in each of its Sub-Consultant agreements imposing the same payment obligations on Sub-Consultants as are applicable to Consultant hereunder and, if City so requests, shall provide copies of such payments by Sub-Consultants to City. If Consultant fails to make payment promptly to a Sub-Consultant for Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.
- 3.3 Consultant warrants that title to all Services covered by an Application for Payment shall pass to City no later than the time of payment by City. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have previously been issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of any and all liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided Work relating to this Agreement. Consultant shall indemnify and hold City harmless from any liens, claims, security interests or encumbrances filed by anyone claiming by, through or under the items covered by payments made by City to Consultant.
- 3.4 Consultant may submit a request for Partial Compensation, prior to a Task Order's completion. A request for Partial Compensation shall be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as

reflected in the progress report, and approved by the Director and at City's sole discretion. Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each service/Project, as may be described in fee schedule and/or hourly rates included in **Exhibit 1** hereto.

3.5 Project Close Out and Final Payment:

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

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

3.5.2.1 delays in the performance of Consultant's Work;

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

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

3.5.2.4 reasonable evidence that Consultant's Work cannot be completed for the unpaid balance amount under an assigned Task Order and this Agreement;

3.5.2.5 damage to City; or

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

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

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

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

3.5.3.3 Acceptance of final compensation by Consultant shall constitute a waiver of all claims except those previously made in writing and identified by Consultant as

unsettled at the time of Consultant's submittal of its final application for compensation.

3.5.3.4 Consultant agrees to maintain adequate books, payrolls and records in forms deemed satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services, unless a dispute regarding the Project or Consultant's Work is ongoing. If any dispute exists, upon notice from City, Consultant shall retain its books, payrolls and records for more than four (4) years after completion of all Services performed herein and for as long after four (4) years as City may request. At all reasonable times, Consultant shall provide access to City and City's duly authorized representatives to all personnel of Consultant, all books, payrolls and records of Consultant and City shall have the right to audit same.

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

ARTICLE IV.
SCOPE OF SERVICES
[SUBJECT TO REVISION, AS APPLICABLE]

4.1 Consultant understands and agrees that City has entered into multiple **On-Call Services for Environmental Remediation** agreements with other Consultants and has the authority to assign services at City's discretion. As stated in **Section 2.2.2** herein, Consultant understands and agrees that City makes no minimum guarantees with regard to the amount of Work, if any, which Consultant may be extended under this Agreement.

4.2 This Agreement is an On-Call, Task Order or indefinite delivery agreement for **On-Call Services for Environmental Remediation** and such other services that are required for Consultant to provide or are associated with **On-Call Services for Environmental Remediation**. Specific requirements as to location, conditions, procedures and associated services pertaining to a Project shall be negotiated and set out in individual Task Orders for each request. Assigned and accepted Task Orders to Consultant shall be incorporated into and become a part of this Agreement.

4.3 Consultant shall provide **On-Call Services for Environmental Remediation** and all associated services required for Consultant to provide such Services, pursuant to this Agreement, as further defined in individual Task Orders. Services may include, but are not limited to, the following:

This On-Call Contract shall use Indefinite Delivery Orders (hereafter referred to as "IDO") and Indefinite Delivery Quantities (hereafter referred to as "IDQ") to respond to and perform environmental

remediation services related to activities involving impacted soil and water media. The services to be provided shall be utilized on an as-needed basis. Work to be performed under this Contract will consist of excavation, removal, loading, transportation and disposal of impacted soils and/or water. The contaminants that have the potential to be present in the media include, but are not limited to, RCRA 11 metals, semi-volatile organic compound, volatile organic compounds, Total Petroleum Hydrocarbons, polycyclic aromatic hydrocarbons, Polychlorinated biphenyls, Asbestos Cement Pipe, et al. Other work may include backfilling excavations, stockpiling, sorting materials, waste removal, waste characterization, recycling of construction debris and the disposal of construction/waste debris, industrial waste, hazardous waste, toxic waste, transite pipes (asbestos cement pipe), Petroleum Storage Tanks (PSTs) removal and petroleum impacted waste and liquid wastes. City shall provide project-specific laboratory analytical data of the media to be handled for each delivery order.

The scope of work may include projects that require response and mobilization for the same day service (such activities may include the removal of liquid waste), or within 24 or 48 hours of notification by the City, to remove potentially impacted media and/or underground storage tanks from a given project. Most of the work orders will require the selected Respondent to mobilize to the site, as indicated by City, and complete the scope of work within the proposed time specified in the approved work order. Emergency response activities, such as immediate containment of spills, suppression of fires, vehicle accidents, etc., are not included within this Contract.

The awarded Contract shall be for a one-year term with an option to renew for one (1) additional one (1) year option period. The estimated fee per project will vary, with a maximum annual Contract amount of \$750,000 per year of the Contract. The quantities included in **Exhibit C Price Proposal Form** hereto, are estimates. City does not guarantee any minimum quantity of work associated with this Contract. Actual payment to the selected Respondent will be based on the documented quantities and the appropriate unit prices. Work shall be performed in accordance with the City of San Antonio's Standard Specifications for Construction (2008), located on the City's website at:

<http://www.sanantonio.gov/cims/standardspecificationsV2.asp>

DELIVERY ORDERS

The selected Respondent shall verbally be notified of the proposed scope of work. At such time, the selected Respondent shall meet with a City representative, inspect the proposed work site and discuss the specific scope of work for each proposed delivery order. The selected Respondent shall submit a written cost estimate proposal to the City representative, based on the Contract Unit Prices, as established in the negotiated Price Proposal Form contained herein, completed and submitted by Respondent. Only the applicable Unit Prices submitted on this form by Respondent shall be considered in developing the cost estimate. Unit items not included on Respondent's Price Proposal Form contained herein will be subject to negotiation by the Environmental Project Manager.

The City representative shall review and approve the estimated cost proposal, prior to issuing a task order to the selected Respondent. Each line item identified on the Price Proposal Form shall be independent from the other line items. All costs, equipment, labor, profit and overhead cost to complete the scope of work shall be included in the Unit Price for each line item submitted by Respondent. The selected Respondent shall use only those line items necessary to fulfill the estimated cost for an issued task order. Any cost or scope of work discrepancies shall be corrected and agreed upon by City and the selected Respondent prior to the issuance and releasing of a task order. The selected Respondent shall not proceed with the work activities until the selected Respondent receives written documentation approving the scope of work and City's acceptance of the total project cost.

A. MOBILIZATION AND DEMOBILIZATION

City shall compensate the selected Respondent for one mobilization and demobilization of mechanical equipment for each assigned project, unless the assigned may not be completed in one sequence of events, requiring completion in multiple phases. Mobilization and demobilization applies only for excavation work. In order to compensate the selected Respondent for several mobilizations, the selected Respondent must have totally demobilized from the staging area or project site. Leaving unused heavy equipment on site is not considered demobilization; personnel mobilizing to a project site each day to complete the work is not considered mobilization, but incidental to the project.

B. EXCAVATION OF IMPACTED SOILS

The Selected Respondent shall be responsible for field verifying all underground utilities and obtaining appropriate permits, prior to beginning all excavation activities. The selected Respondent shall, at a minimum, contact a utility locate service and coordinate utility inspections for field verification purposes. The selected Respondent shall field verify all utilities, prior to excavation. City shall not be responsible for any damage to utilities or other underground structures as a result of the selected Respondent's excavation activities. The selected Respondent fully shall be responsible and liable for any and all damages to utilities, private property and infrastructure, as well as for any consequential damage arising from an impact to utilities or underground structures as a result of its excavation or any other activity. The selected Respondent fully shall be responsible to obtain a right-of way (hereafter referred to as "ROW") permit, from the City of San Antonio's TCI ROW Division, for traffic control measures and street/sidewalk restoration. The selected Respondent shall be responsible for providing traffic control measures for projects requiring this service. The selected Respondent shall excavate all soils using all necessary heavy equipment including, but not limited to, such equipment as a backhoe, grad all, excavator or bulldozer, unless field conditions or other conditions warrant hand excavation. The selected Respondent shall employ work methods to prevent cross-contamination of media and equipment. When practicable, the selected Respondent shall excavate all soils and place the impacted soils directly into an authorized vehicle for transportation of impacted media, unless the issued scope of work requires reuse of clean or impacted material. If soils are to be staged, the selected Respondent shall take precautions to prevent cross-contamination to surrounding areas. Said precautions may include placing the stockpile on asphalt or lining the staging area, constructing berms around the staging area and/or covering the stockpile to prevent stormwater run-on/run-off and wind dispersion.

The selected Respondent shall implement engineering controls, such as wetting the material as necessary, to prevent dust and wind dispersion while excavating impacted soils. No visible dust or debris shall be generated during the excavation of impacted soils. The selected Respondent may be required to prepare a Waste Management Plan (hereafter referred to as "WMP") and/or a Health and Safety Plan (hereafter referred to as "H&SP") prior to beginning a given scope of work, and said H&SP shall depend on the conditions of the assigned scope of work. City's representative must receive and review these documents, prior to issuing approval to proceed with the task order. In other instances, the selected Respondent shall be required to work jointly with a construction Contractor. It is expected the selected Respondent shall attend some project construction coordination meetings prior to initiating its assigned scope of work.

C. TRANSPORTATION AND DISPOSAL OF IMPACTED MEDIA

All impacted material shall be transported by an authorized hauler to an authorized disposal facility, as described in this **Section C**, and in compliance with applicable regulations. Transporters shall be insured, licensed and permitted by the state, federal and local agencies (Waste Hauler Permit issued by City's Solid Waste Department), as required for the waste material required to be hauled. The selected Respondent shall provide City proof of licenses and permits, as required, prior to commencing the work. All transporting vehicles shall be in good working condition. All loads must be covered with a tarp to prevent dispersion of material while transporting the media from the project site to the selected landfill, disposal facility or selected location. City reserves the right to remove transporters from the site if the vehicles are not in good working condition or do not have a tarp covering the media. End dump trailers and bobtail dump trucks may be used to transport impacted soils, contingent upon the site location, accessibility and authorization by City. All transporters shall haul impacted media directly to the disposal facility or any other authorized facility and shall not spill or track impacted material in route to the authorized facility. If the selected Respondent requires decontamination of the transporters, it shall be done at the end of the workday and at the expense of the selected Respondent. Truck liners may be allowed, at the expense of the selected Respondent and upon approval by City, when handling dry materials, since liners may or may not reduce the decontamination process. Truck liners, when necessary, will be allowed when City's representative approves this line item as part of the scope of work. In some instances, the selected Respondent might be required to transport lightly impacted or non-impacted material to a different authorized facility. The same rules previously mentioned above are applicable for this particular instance.

D. DECONTAMINATION

The selected Respondent shall prevent cross-contamination of the impacted material to surrounding media by decontaminating all equipment, tools, personnel, etc. It shall be the selected Respondent's responsibility to decontaminate transporting trucks and/or roll-offs containers prior to leaving the site. A dry method, such as brushing off visible debris from wheels and sides of the transporter, may be allowed. If a wet method is necessary to decontaminate any piece of equipment or a transporter, all decontamination waste must be containerized and properly disposed. If the material is saturated with liquids and has the potential to adhere to the transporter, the selected Respondent shall be required to line the transporter with a minimum of one layer of 6-mil plastic, but this measure must be approved by the City.

The selected Respondent shall decontaminate all equipment that has been in contact with the impacted media: kindly note dry methods are preferred. As necessary, the selected Respondent shall decontaminate all equipment using high-pressure water and Alconox® soap. All of the selected Respondent's personnel coming into contact with the impacted material shall be decontaminated before leaving the site by removing and disposing of impacted clothing and washing with water and low foaming soap. The selected Respondent shall perform more stringent decontamination methods, as appropriate. All decontamination procedures shall be identified and described in the selected Respondent's WMP and H&SP.

E. PERSONAL PROTECTIVE EQUIPMENT

All tasks required as part of this On-Call Contract have the potential to expose the selected Respondent's workers to hazardous substances. All employees working on site (to include, but not limited to, equipment operators, general laborers, and others), potentially shall be exposed to hazardous substances, health hazards or safety hazards. The selected Respondent's workers, their supervisors and management are responsible to abide by specifications outlined in 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response (hereafter referred to as "HAZWOPER").

The selected Respondent is responsible for reviewing 29 CFR 1910.120, addressing engineering controls, work practices and personal protective equipment (hereafter referred to as "PPE") for its employees' protection from exposure to hazardous substances and safety and health hazards. PPE equipment to be donned by the selected Respondent's employees shall be identified and described in the selected Respondent's H&SP and should abide by 29 CFR 1910.120 HAZWOPER.

It shall be the selected Respondent's responsibility to assess the work environment by providing personnel monitoring and thereafter determining if additional PPE is necessary, once the scope of work is in process. A HS&P may be required for a specific project and shall be submitted at the beginning of the project to City's Environmental Project Manager for review and approval. City's Environmental Project Manager shall ensure that the plan HS&P is accurate and complete in relation to the assigned task. The selected Respondent's is responsible for the cost of providing PPE for its employees.

F. TRAINING

The selected Respondent shall ensure all its workers have completed the HAZWOPER training, as deemed by 29 CFR 1910.120. At a minimum, all of the selected Respondent's workers who handle impacted media shall receive forty (40) hours of HAZWOPER Training. Additionally, the selected Respondent's Supervisor also must have an additional eight (8) hours of Supervisor HAZWOPER Training. The selected Respondent shall submit copies of certificates for each of its workers involved in the project, as part of the HS&P (if required), prior to beginning work. City reserves the right to verify 40-hour HAZWOPER Training certificates of each Supervisor and construction worker, to ensure compliance with OSHA 1910.120 regulations.

G. SAMPLING AND ANALYSIS

No sampling or analysis shall be conducted on regular basis under this On-Call Contract, with the exception of incidental sampling, which may be necessary for specific work items. All sampling and analysis required to determine compliance with clean up standards shall be conducted by City's Environmental Consultant under a separate contract. The selected Respondent may be required, under this On-Call Contract, to assist City's Environmental Consultant with access and with facilitating sample collection. If the selected Respondent is required to collect and analyze samples, all samples shall be collected and analyzed in accordance with local, state and federal guidelines. These services shall be outlined under **Section I Miscellaneous Services** herein.

H. RIGHT OF WAY PERMIT

When working within City's ROW, as deemed necessary and appropriate by City's Environmental

Project Manager, the selected Respondent shall be responsible for obtaining all necessary permits. Issuance of said necessary permit shall be contingent upon the selected Respondent submitting proof of insurance, a proposed traffic control plan (if necessary) and other documentation to City's ROW Office. Any fees for the ROW permit to City's ROW Office hereby are waived under this On-Call Contract. Said costs, to be included by Respondent in its **Exhibit C Price Proposal Form** hereto, are for Respondent's costs in preparation of the permit. Only one permit fee shall be authorized for each project.

I. MISCELLANEOUS SERVICES

In some instances, the selected Respondent may be required to provide excavation services in support of an Archeological investigation in an area potentially and/or verified as contaminated. In some projects, excavation services may be required using a hydro excavator. Miscellaneous services under this On-Call Contract also may include the abandonment and plugging of deep irrigation or domestic water wells. The depth of these wells may be greater than 500 feet and may be located in the Edward Aquifer or not. Services to be included by Respondent to plug these deep wells include coordination and permitting with the Edwards Aquifer Authority (if necessary), or other regulatory agency.

When working on a given project requiring traffic control services, the selected Respondent may be required to retain a vendor/Subcontractor to perform these services. Additional environmental sampling is normally performed by the City's Environmental Consultant; however, in certain circumstances, the selected Respondent may be required to perform this task instead. If other entities provide any of these services beside the selected Respondent, City shall reimburse the selected Respondent for the services at the actual incurred cost(s), in addition to project management hours to coordinate these effort. Line items used for miscellaneous services have been included in the **Exhibit C Price Proposal Form** hereto.

J. ADDITIONAL ENVIRONMENTAL REQUIREMENTS

The selected Respondent shall exhibit professionalism during the performance of all aspects of this On-Call Contract and perform all work under this On-Call Contract in accordance with accepted industry standards and practices. The selected Respondent shall control site safety and security at all times after the notice to proceed for a specific work order has been provided by City. As necessary, the selected Respondent shall install temporary fencing, barricade tape or other means to control access by unauthorized persons. Costs associated with site security and safety are considered incidental and shall be included in the specific task order for a given project. Work methods and quality control measures shall be the responsibility of the selected Respondent. City reserves the right to approve or suspend work methods considered unsafe, illegal or ultimately detrimental to the Project or City.

The selected Respondent shall perform all work under this On-Call Contract in accordance with all local, state and federal regulations required to perform the issued task order. The selected Respondent shall follow the Texas Commission on Environmental Quality (hereafter referred to as "TCEQ") rules and regulations, when applicable. The selected Respondent shall possess all applicable licenses, permits, insurance and training required to perform the required environmental work activities. The applicable laws, regulations and policies include, but are not limited to:

- 30 Texas Administrative Code (TAC) 327
- 30 TAC 330
- 30 TAC 333
- 30 TAC 334
- 30 TAC 335
- 30 TAC 343
- 29 Code of Federal Regulations (CFR) 1910.120
- 40 CFR 261
- 40 CFR 268
- 40 CFR 761

K. PETROLEUM STORAGE TANK REMOVAL

The selected Respondent properly shall remove and dispose of Underground/Aboveground Storage Tanks, in accordance with local, state and federal regulations. The selected Respondent shall have and maintain current licenses, permits and training, as required, for storage tank removal including, but not limited to:

- TCEQ B License (30 TAC 334.416)
- TCEQ Corrective Action Specialist (30 TAC 334.453)
- TCEQ Corrective Action Project Manager (30 TAC 334.453)

The majority of the time, the selected Respondent shall be asked to coordinate with City's Environmental Consultant to notify and to submit the necessary documentation to TCEQ and City's Fire Marshall, prior to any storage tank removal activities. However, in some instances the selected Respondent solely shall have to perform all requirements of the notifications, submittal of documentation and the performance of the sampling according to TCEQ's RG411 requirements. To that end, costs associated with line items 9.9, 9.10, and 9.11 of Exhibit C Price Proposal Form should not include coordination with regulatory agencies, notifications or sampling. Costs associated with Line item 9.12 of Exhibit C Price Proposal Form shall be included in Respondent's pricing.

The selected Respondent properly shall render the storage tank vapor-free and inert prior to removal activities, in accordance with American Petroleum Institute and other accepted industry practices. All storage tanks permanently shall be removed from service and shall be destroyed, disposed of or recycled for scrap metal. The selected Respondent shall be responsible for making all proper notifications prior all removal activities. At the end of the assigned task, the selected Respondent shall be required to provide documentation proving the proper disposal of the storage tank(s).

Soil and/or water removed from the tank basin shall be sampled and analyzed, in accordance with TCEQ procedures and directives. The selected Respondent shall provide support to City's Environmental Consultant to perform this sampling and analysis task. As required, the selected Respondent shall over excavate and dispose of impacted soils at an authorized facility. Regulated Petroleum Storage Tank sites shall be closed, in accordance with TCEQ regulations. As required by TCEQ, soil samples shall be collected from the tank basin excavation, in accordance with TCEQ's RG 411 requirements. The selected Respondent shall assist City's Environmental Consultant to perform this soil sampling task.

The selected Respondent shall be responsible for coordinating and providing the proper documentation to City's Environmental Consultant, for said documentation to be submitted to the agencies requiring said information. Copies of all proper documentation shall be sent to City's Environmental Consultant at the completion of the task.

L. TRUCK STANDBY CHARGES

The selected Respondent shall be required to have an adequate number of transporters available for task order dates and times, as specified by City's representative. In the event that site and/or construction activities delay the loading of the selected Respondent's transporters, due to unforeseen conditions, the selected Respondent shall be asked to switch to Standby charges. **Kindly note standby time will begin two (2) hours after the truck has arrived to the task order work site. Standby time will not be reimbursed for trucks waiting at the landfill to dispose of their loads.**

It will be the selected Respondent's responsibility to notify City's representative on the arrival time of the trucks. City will not consider any standby charges that are not approved by City's representative within twenty four (24) hours of the incident.

- 4.4 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday services, as requested by City. Persons retained by Consultant to perform Work pursuant to this Agreement shall be employees or Sub-Consultants of Consultant.
- 4.5 Consultant shall not commence Work on any authorized and issued Task Order, pursuant to this Agreement, until thoroughly being briefed on the scope of a project and being notified by City in writing to proceed. Should the scope of Work of an issued Task Order subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.
- 4.6 Consultant, in consideration for the compensation herein provided, shall render the professional services described in this **Section IV Scope of Services** that are necessary for the advancement of a project to substantial completion.
- 4.7 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined in each City-authorized Task Order and in accordance with the Consultant's Fee Schedule, attached hereto and incorporated herein and labeled as **Exhibit 1**. The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with City and with the approval of the Director for each authorized Task Order and as provided in this Agreement.
- 4.8 Consultant's Fee Schedule, which includes pre-priced tasks and/or hourly rates, is incorporated by reference herein and attached hereto and labeled as **Exhibit 1**.

ARTICLE V. TIME AND PERIOD OF SERVICE

- 5.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and upon the execution by both parties and shall remain in force for the period of one year, herein referred to as the “Initial Term”.
- 5.2 As the enabling Ordinance provides, City shall retain an option to extend this Agreement for one (1) additional one year option period, hereafter referred to as the “Extension Period”. The Director shall have the authority to exercise such options at his/her discretion.
- 5.3 Time is of the essence of this Agreement. Consultant shall perform and complete its obligations for the various Tasks of services under **Article IV** Scope of Services herein in a prompt and continuous manner so as to not delay the construction of the work for a Project in accordance with the schedules approved by City and Construction Contractor. If, upon review of a Task Order, corrections, modifications, alterations and/or additions are required of Consultant for providing its services, those items shall be completed by Consultant before that Task Order is approved.
- 5.4 Consultant shall not proceed with the next appropriate Task Order without a written authorization from City. City may elect to discontinue Consultant's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City retains the right to make adjustments to the scope of Consultant's Task Order obligations at any time to achieve the required services.
- 5.5 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's reasonable control. Within twenty one (21) days from the occurrence of any such event, for which time for performance by Consultant shall significantly be extended under this **Section 5.5**, Consultant shall give written notice thereof to City stating the reason for such time extension and the actual or estimated time for completion thereof. If City determines that Consultant is responsible for Consultant's need for an extension of time, City shall have the right to make a Claim as provided in this Agreement.
- 5.6 This Agreement with Consultant shall remain in force for a period of time City determines reasonably may be required for the design, award of the contract and the completion of a Project, including any extra work and any required extensions thereto, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

ARTICLE VI. PROJECT INSPECTION SERVICES REQUEST PROCESS

- 6.1 Necessary inspection requirements shall be established with each project-specific issued Task Order.
- 6.2 When City has a Project for which it desires to procure **On-Call Services for Environmental Remediation**, City shall notify Consultant by issuing a proposed Task Order Request through **PRIMELink**. Each proposed Task Order Request shall include, at a minimum: the name of the project; the location of the project; copies of or access to project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposal; a project schedule, to include any specific deadlines for performance of **On-Call Services for Environmental Remediation**; any project-specific insurance requirements necessitated by the Work, which may require additional types of coverages or higher levels of coverage for Consultant than are required by the Agreement; and a deadline for providing City with a Proposal

based on the above supplied information.

- 6.3 Consultant shall prepare and submit to City, within the deadline stated in a proposed Task Order Request, a Proposal for the desired services which shall include, at a minimum: Scope of Services; specific staffing; and an estimate of Task Order cost to City, based on the rates and fees agreed upon in **Exhibit 1** hereto and Consultant's approved Fee Schedule. Consultant shall submit the Proposal in editable electronic format to the City through *PRIMELink*. By submitting a Proposal, Consultant thereby agrees to perform the requested service(s) within the time stated in the proposed Task Order Request.
- 6.4 Consultant and City shall negotiate the Proposal. Once Consultant and City reach mutual agreement as to scope, necessary staffing, scheduling and total cost, City shall issue a finalized Task Order through *PRIMELink*, to be accepted by both parties evidencing the agreed to scope and costs.
- 6.5 The Director has the authority to execute a Task Order in *PRIMELink* on behalf of City, so long as such finalized Task Order does not exceed the total contract value and funds are provided for in the project budget, as allocated by the San Antonio City Council.
- 6.6 Consultant shall not proceed with services until a finalized Task Order has been negotiated and accepted by both Consultant and City, Consultant receives a written Notice to Proceed from City and all documents required by City in advance of commencement of Work (to include Consultant's proof of insurance) have been provided to City. Any services provided or expenses incurred by Consultant, prior to receiving a written Notice to Proceed or after the expiration of either this Agreement or a finalized Task Order, shall be at Consultant's sole risk and expense and may not be reimbursable by City.
- 6.7 Actual amounts billed shall not exceed the total amount as set out in a finalized Task Order.
- 6.8 City shall not pay and Consultant shall not invoice for any time or expense associated with a project proposed Task Order Request process, including development of Proposal and the associated Task Order negotiation.

ARTICLE VII. COORDINATION WITH THE CITY

- 7.1 Consultant shall hold periodic conferences with City representative(s) through the end of a project. A project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Consultant in this project coordination, City shall make available for Consultant's use in planning for a project all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to a particular project, at no cost to Consultant. However, any and all such information shall remain the property of City and immediately shall be returned by Consultant upon termination or the completion of a project or if so instructed by City.
- 7.2 The Director shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Consultant's services.
- 7.3 City promptly shall give written notice to Consultant whenever City observes, discovers or

otherwise becomes aware of any defect in Consultant's services, in the work of a Contractor or any development that affects the scope or timing of Consultant's services.

- 7.4 Unless otherwise required by City, City shall furnish approvals and permits from all governmental authorities having jurisdiction over a project and other such approvals and consents from others, as may be necessary, for the completion of a project. Consultant shall provide City reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Consultant pursuant to other provisions of the Agreement, but Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

ARTICLE VIII. REVISIONS TO DOCUMENTS

Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents as may be required to meet the needs of City and which are within the Consultant's Scope of Services. After the approval of reports or other documents by City, any revisions, additions or other modifications made at City's request, which involve extra services and expenses to Consultant, only shall be requested through an additional Task Order for services.

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- 9.1 All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by Consultant shall remain the property of Consultant as instruments of service. However, it is understood that City shall have free access to all such Consultant information and City is granted the right to make and retain copies of Consultant's drawings, estimates, specifications and all other documents and data. Any reuse of Consultant's information without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant.
- 9.2 Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, immediately shall be delivered to City at no additional cost to City, upon request or termination or completion of this Agreement without restriction on its future use.
- 9.3 Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City.
- 9.4 Consultant hereby assigns all statutory and common law copyrights to City of any copyrightable Work product that in part or in whole was produced from this Agreement, including all equitable rights. No reports, maps, documents or other copyrightable Works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, drawings or other copyrightable Work produced under this Agreement shall become the property of City (excluding any instrument of services, as defined in **Section 9.1**

herein, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction, against City, insofar as the same are based on any claim that materials or Work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

- 9.5 Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers or other persons, subsequent to the completion of a project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, to include electronic copies, subsequent to the completion of a project.
- 9.6 Copies of documents, which may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) that are furnished by Consultant to City only are for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 9.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

ARTICLE X. TERMINATION AND/OR SUSPENSION OF SERVICES

10.1 Right of Either Party to Terminate for Default.

- 10.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform, through no fault of the terminating party, in accordance with the terms of this Agreement and a failure to cure said failure, as provided in this **Section 10.1**.
- 10.1.2 The party not in default shall issue a written and signed Notice of Termination (citing this **Section 10.1.2**) to the other party declaring the other party to be in default and stating the reason(s) why the other party it is in default. Upon receipt of such written Notice of Default, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day period, commencing upon receipt of said Notice of Termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

10.2 Right of City to Terminate.

- 10.2.1 City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a signed Notice of Termination (citing this **Section 10.2.1**), which shall take effect on the twentieth (20th) day following receipt by

Consultant of said Notice of Termination and/or upon the scheduled completion date of the performance phase of a project on which Consultant then currently is working, whichever effective termination date occurs first.

10.3 Right of City to Suspend Giving Rise to Right of Consultant to Terminate

10.3.1 City reserves the right to suspend this Agreement at the end of any phase of a project for the convenience of City by issuing a signed, written Notice of Suspension (citing this **Section 10.3.1**) which shall outline City's reasons for the suspension and the expected duration of the suspension. Such expected duration shall, in no way, guarantee what the total number of days of suspension shall occur. Such suspension shall take effect immediately upon Consultant's receipt of said Notice of Suspension.

10.3.2 Consultant hereby is given the right to terminate this Agreement, in the event such suspension extends for a period in excess of one hundred twenty (120) days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination (citing this **Section 10.3.2**) to City after the expiration of one hundred twenty (120) days from the effective date of a suspension. Termination (under this **Section 10.3.2**) shall become effective immediately upon receipt of said written notice by City.

10.4 Procedures Consultant to follow upon Receipt of Notice of Termination.

10.4.1 Upon receipt of a Notice of Termination from City and prior to the effective date of termination, unless the Notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set out herein, Consultant immediately shall begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and promptly shall proceed to cancel all existing orders and contracts, insofar as said orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of said Notice of Termination (unless Consultant successfully has cured its cited failure to perform), Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant Consultant an extension to the 30-day time period for submittal of such statement.

10.4.2 Copies of all completed or partially completed documents and all reproductions of all completed or partially completed documents, prepared under a Task Order pursuant this Agreement prior to the effective date of termination, immediately shall be delivered to City in a form requested by City as a pre-condition to a final payment to Consultant. These documents shall be subject to the restrictions and conditions set forth in **Article IX** herein.

10.4.3 Upon the above conditions being met, City promptly shall pay Consultant that proportion of the prescribed fee, which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of any fee.

10.4.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that the failure of Consultant to comply with the submittal of the required statement(s) and document(s), as cited herein, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed by Consultant under this

Agreement.

10.4.5 Failure of Consultant to comply with the submittal of the required statement and documents, as outlined herein, shall constitute a waiver by Consultant of any and all rights or claims to collect monies that Consultant otherwise may be so entitled for services performed under this Agreement.

10.5 Procedures Consultant Shall Follow upon Receipt of Notice of Suspension.

10.5.1 Upon Consultant's receipt of a written Notice of Suspension, which date also shall be the effective date of the suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and promptly shall proceed to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.

10.5.2 Consultant shall prepare a statement showing, in detail, the services performed under a Task Order and this Agreement, prior to the effective date of suspension.

10.5.3 Copies of all completed or partially completed documents, prepared under a Task Order pursuant to this Agreement prior to the effective date of suspension, shall be prepared for possible delivery to City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

10.5.4 In the event Consultant exercises its right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt of City's Notice of Termination, Consultant promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing, in detail, the services performed under this Agreement prior to the effective date of suspension.

10.5.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.

10.5.6 Upon the above conditions being met, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of any fee.

10.5.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that failure of Consultant substantially to comply with the submittal of the required statement(s) and document(s), as outlined above, shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

ARTICLE XI. CONSULTANT'S WARRANTY

Consultant warrants that the services required under this Agreement shall be performed with the same degree of professional skill and care typically exercised by similar consulting professionals performing

similar services in San Antonio, Bexar County, Texas. Consultant further warrants that it has not employed or retained any company or person other than a bona fide employee, working solely for Consultant, to solicit or secure this Agreement and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this Consultant's Warranty, City shall have the right to terminate this Agreement under the provisions of **Article X** herein.

ARTICLE XII. NON-DISCRIMINATION POLICY

12.1 Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, **Article X** of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consultant represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This **Section 12.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

12.2 Sub-Consultants. Upon execution of this Agreement by Consultant, Consultant shall provide City a detailed outreach and diversity plan for approval by City, including Consultant's list of Sub-Consultants, and shall require all of its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's web site. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any listed and approved Sub-Consultant from a project.

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

Consultant shall not assign or transfer Consultant's interest in this Agreement without the written consent of City.

ARTICLE XIV.

INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any Work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City’s Transportation and Capital Improvements Department’s (hereafter referred to as “TCI”) Contract Services Division, which clearly shall be labeled **“On-Call Services for Environmental Remediation”** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by Consultant, attesting that the furnished Certificate(s) represent Consultant’s current insurance coverages. City shall not accept a Memorandum of Insurance or Binder from Consultant as proof of insurance. The certificate(s) shall have the agent’s signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City’s TCI Contract Services Division. No officer or employee, other than City’s Risk Manager, shall have authority to waive this requirement.
- 14.2 City reserves the right to review the insurance requirements of this **Article XIV** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and limits when deemed necessary and prudent by City’s Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance will City allow modification of insurance coverages whereby City may incur increased risk.
- 14.3 Consultant’s financial integrity is of interest to City; therefore, subject to Consultant’s obligation to maintain reasonable deductibles in such amounts as are approved by Consultant’s insurance companies, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects/contracts. If a project/contract does not justify these standard limits of insurance coverages, Consultant may request a review and modification of the City’s insurance requirements, to be considered on a project-by-project/contract-by-contract basis:

1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Broad Form Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence; General Aggregate limit of \$2,000,000 or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

c. Hired Vehicles	
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

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

- 14.4 Consultant agrees to require, by written contract, that all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same insurance coverage required of Consultant herein and provide to Consultant a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall acquire said certificate and endorsement, prior to the commencement of any Work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Section 14.3.5**. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the contract for all purposes.
- 14.5 If City requests a copy/copies of an insurance policy, Consultant promptly shall comply and shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Consultant’s policy, City shall submit the received request, along with Consultant’s information, to the Texas Attorney General (hereafter referred to as “AG”) for an opinion regarding the release of Consultant’s policy information. Consultant and City agree that City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City will provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant’s information.
- 14.6 Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:
- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers’ compensation and professional liability policies;
 - Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;
 - Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and

- Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 14.7 Within ten (10) calendar days of receipt by Consultant of a notice of cancellation or the 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 under this Agreement, should there be a lapse in insurance coverages at any time. Failure of Consultant to both provide and maintain the required insurance coverages shall constitute a material breach of this Agreement.
- 14.8 In addition to any other remedies 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, City shall have the right to order Consultant immediately to stop Work and Consultant immediately shall stop work until Consultant demonstrates compliance with the insurance requirements hereof.
- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its Sub-Consultants' and/or Subcontractors' performance of the Work covered under this Agreement.
- 14.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by the City of San Antonio, for liability arising out of operations under this Agreement.
- 14.11 It is understood and agreed that the insurance coverages required are in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided by Consultant.
- 14.12 Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XV INDEMNIFICATION

- 15.1 CONSULTANT WILL FULLY INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT**

APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

ARTICLE XVI. CLAIMS AND DISPUTES

- 16.1 As used herein, a Claim is a demand or assertion by one of the parties to this Agreement seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief, with respect to the terms of the Agreement. The term "Claim" also may include other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims shall be initiated by notice to the other party electronically through *PRIMELink*. A Claim of Consultant, whether for additional compensation, additional time or other relief, shall be sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 A Claim by either Consultant or City shall be initiated electronically through *PRIMELink* and sent to the other party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.
- 16.3 Pending final resolution of a Claim, except as otherwise agreed upon in writing, Consultant shall proceed diligently with performance of a Task Order and this Agreement and City shall continue to make payments to Consultant in accordance with this Agreement.
- 16.4 If Consultant wishes to make a Claim for an increase in the time for performance, notice to City through *PRIMELink*, as stated in this **Section XVI** herein, shall be given. Consultant's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- 16.5 Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply to claims by both Consultant and City:

16.5.1 No consequential damages shall be allowed.

16.5.2 Damages are limited to any extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.

16.5.3 No profit will be allowed on any damage claim.

16.6 Nothing in this **Section XVI** shall be construed to waive City's Governmental Immunity from a lawsuit, which Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.

16.7 Alternative Dispute Resolution.

16.7.1 Each party to this Agreement is required to continue to perform its obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable to perform under the circumstances.

16.7.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Agreement agree they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this **Section 16.7.2** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.7.3 Mediation.

16.7.3.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

16.7.3.2 Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon the written agreement of both parties.

16.7.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this **Article XVI** shall be deemed to have occurred.

16.7.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in San Antonio, Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No

provision of this Agreement is a consent to suit.

- 16.7.4 Consultant and City expressly agree that, in the event of litigation, both parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law or any other provision for payment of Attorneys' fees.

ARTICLE XVII. SEVERABILITY

If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any section, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

ARTICLE XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

- 18.1 No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City or shall financially be interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.
- 18.2 Consultant acknowledges that it is informed that the Charter of City and its Ethics Code prohibits 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. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; a City officer or employee's parent, child or spouse; a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a Sub-Consultant or Subcontractor on a City contract; and/or a partner or a parent of a subsidiary business entity.
- 18.3 Consultant warrants, certifies and this Agreement is made on City's reliance thereon that Consultant, its officers, employees and agents neither are officers nor employees of City. Consultant further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

ARTICLE XIX. CONFLICTS OF INTEREST DISCLOSURE

Consultant shall disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so will constitute a violation of City's Code. To be

"associated" in a business venture or business dealings includes: being in a partnership or joint venture with a City officer or employee; having a contract with a City officer or employee; being joint owners of a business with a City officer or employee; owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or having an established business relationship with a City Officer or employee as a client or customer.

**ARTICLE XX.
STANDARD OF CARE/LICENSING**

- 20.1 Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 20.2 Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning a project including, but not limited to, scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

**ARTICLE XXI.
RIGHT OF REVIEW AND AUDIT OF CONSULTANT'S RECORDS**

- 21.1 Consultant grants City and its designees the right to audit, examine or inspect, at City's election, all of Consultant's Records relating to the performance of Work under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Consultant's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain Consultant's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute.
- 21.2 "Consultant's Records" shall include any and all information, materials and data of every kind and character generated as a result of the Work under any Task Order and this Agreement. Example of Consultant Records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.
- 21.3 City agrees that it will exercise its right to audit, examine or inspect Consultant's Records only during regular business hours. Consultant agrees to allow City and City's designee access to all of Consultant's Records, Consultant's facilities and the current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.
- 21.4 Consultant shall include this audit clause in any Sub-Consultant and Subcontractor, Supplier or

**ARTICLE XXVI
CAPTIONS**

The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

(Remainder of this Page 23 intentionally left blank)

IN WITNESS WHEREOF, the City of San Antonio lawfully caused these present to execute this Agreement by the hand of City Manager, or his/her designee; Consultant, acting by the hand of _____ **Name** _____, thereunto authorized _____ **Title** _____ does now sign, execute and deliver this document.

Executed on this _____ day of _____, 20_____.

CITY OF SAN ANTONIO

NAME OF FIRM

PETER ZANONI
DEPUTY CITY MANAGER

NAME
TITLE

APPROVED:

CITY ATTORNEY

EXHIBIT 1

CONSULTANT'S FEE SCHEDULE
(TO INCLUDE REIMBURSEABLES, IF ANY)

EXHIBIT 2

**SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN
AND
CITY'S SBEDA ORDINANCE COMPLIANCE AND PROVISIONS**

NOT APPLICABLE

EXHIBIT 3

**GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS**

EXHIBIT 4
AMENDMENT TO CONTRACT (If applicable)

Insert the following language regarding the DBE program:

The City of San Antonio Transportation and Capital Improvements Department (TCI) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the Texas Department of Transportation (DOT). The objective of the DBE program is to ensure that the TCI Department complies with 49 CFR Part 26, and to remedy past and current discrimination against disadvantaged businesses. The program ensures a “level playing field” and fosters equal opportunity in all Texas Department of Transportation and Federal Highway Association assisted contracts that include highway and street construction.

The policy of the TCI Disadvantaged Business Enterprise program is:

1. To ensure non-discrimination in the award and administration of DOT assisted and locally funded contracts
2. To create a level playing field on which DBEs can compete fairly for DOT assisted and locally funded contracts
3. To ensure that the DBE program is narrowly tailored in accordance with the applicable law
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs
5. To help remove barriers to the participation of DBEs in DOT assisted and locally funded contracts
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE program

DBE OBLIGATION

The TCI Department and/or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the TCI Department and its contractors shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of TXDOT-assisted contracts.

THE DBE GOAL FOR THIS PROJECT IS 8%

DEFINITIONS

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) *Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:*
 - (i) *One concern controls or has the power to control the other; or*
 - (ii) *A third party or parties controls or has the power to control both; or*
 - (iii) *An identity of interest between or among parties exists such that affiliation may be found.*
- (2) *In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.*

Commercially Useful Function—a DBE is considered to perform a commercially useful function when it:

- (1) *Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,*
- (2) *Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.*

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantage business enterprise or DBE means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Good faith efforts mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

CERTIFICATION

1. A contractor/bidder/proposer shall submit to the City a copy of the DBE Certification Affidavit, for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers in the performance of work.
2. The Certification Affidavit must be from a firm that has been certified by one of the five (5) certifying agencies of the Texas Unified Certification Program (TUCP). The five agencies are: Texas Department of Transportation (TxDot), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.
3. A firm must be certified on or before the bid/proposal due date in order for the firm's proposed work on the particular contract to be credited toward the DBE goal. It is not enough for a certification application to have been submitted by the deadline.

COUNTING JOINT VENTURES

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, (provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

- a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
- b. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
- c. A description of the work to be performed by all the Joint Venture Partners.
- d. Proof of current certification status of the individual DBE venture partners.

GOOD FAITH EFFORTS

The bidder/proposer shall demonstrate, to the satisfaction of the DBE Liaison that genuine efforts have been made to achieve the DBE goal. The requirements for demonstrating “good faith efforts” are set forth as follows:

1. Written notices to DBEs contacted by the bidder/proposer for specific scopes of work identified by the bidder/proposer for subcontracting opportunities not less than five (5) business days prior to bid due date. Such notices shall include information on the plans, specifications and scope of work, including the deadline for submission of interest in teaming;
2. Attendance at a pre-bid conference, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals.
4. For those DBES responding affirmatively in writing to the notice required by Item 1 above,
 - (a) reasons why agreements were not reached, including written explanation for rejection of bids;
 - (b) if additional elements of work have been identified by the bidder/proposer as available for subcontracting, the bidder/proposer shall contact the TCI Department DBE Liaison to ascertain the availability of DBE firms in those areas.
5. Efforts to assist DBE contractors with bonding, insurance, and financing, where appropriate.
6. Seeking the assistance of the TCI DBE Liaison in contacting DBEs.
7. A bidder/proposer shall commit to the minimum percentage of DBE utilization as submitted with its bid/proposal on this contract. During the term of this contract, any unjustified failure to comply with the level of DBE participation identified in the bid/proposal shall be considered a material breach of contract.
8. If the bidder/proposer is a certified DBE and the DBE bidder/proposer intends to perform a portion of the work with its own work force, the DBE bidder/proposer must identify the work specifically by type and dollar value and must perform the work indicated with its own work forces in order to have that work counted toward the goal. (Even though the bidder/proposer is a certified DBE does not relieve the DBE bidder/proposer of the responsibility to make good faith efforts.)
9. In addition, all bidders/proposers will be required to submit the following information with the bid:
 - (a) The names and addresses of DBE firms that will participate in the contract;
 - (b) A description of the work that each DBE will perform
 - (c) The dollar amount of the participation of each DBE firm participating
 - (d) Written documentation of the bidder’s/proposer’s commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - (e) Written confirmation from the DBE that it is participating in the contract as provided in the bidder’s/proposer’s commitment.

EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a bidder/proposer will be evaluated by the DBE Liaison to determine whether the efforts to

obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions, which the DBE Liaison may consider as part of the bidder's/proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate "Good Faith Efforts" are as follows:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a) Negotiating in good faith with interested DBEs. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(b) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a prime contractor failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the prime contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. In determining whether a bidder/proposer has made good faith efforts, the DBE Liaison may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the DBE Liaison may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

RECONSIDERATION MECHANISM

The TCI Department DBE Liaison will evaluate the “good faith efforts” of a firm. If after reviewing the good faith efforts submitted by Bidder/Proposer, the DBE Liaison determines that the Bidder/Proposer has failed to adequately document its good faith efforts, then the Bidder/Proposer shall have the opportunity to provide written documentation or argument, to the TCI Director, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Proposer will have the opportunity to meet in person with the TCI Director to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The TCI Director will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the TCI Director.

The TCI Director may determine that the efforts of the Bidder/Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City. However, if the TCI Director determines that the Bidder/Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Texas Department of Transportation

COMPLIANCE

If a bidder/proposer is awarded a contract:

1. The bidder/proposer must not terminate for convenience a DBE subcontractor (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the City’s prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the bidder/proposer must notify the City immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation.

2. The Bidder/Proposer will be required to make good faith efforts to find another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the City has established for this contract. The Bidder/Proposer will be required to obtain the DBE Liaison’s prior approval of the substitute DBE, through the submittal of Change of Subcontractors/Suppliers and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the Bidder/Proposer fails or refuses to comply in the time specified, our office may issue a termination for default.

PROMPT PAYMENT

The Prime Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its subcontract **no later than 10 days** from the date that the prime contractor has been paid by the City for invoices submitted for performance of subcontractor's work. A delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of San Antonio. This clause applies to both DBE and non-DBE subcontractors.

To Apply for DBE Certification, please contact the South Central Texas Regional Certification Agency (SCTRCA) at (210) 227-4722 or www.sctrca.org

For additional information contact Courtney McClure, TCI DBE Coordinator, (210) 207-4633.