

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS
COUNTY OF BEXAR
CITY OF SAN ANTONIO

CAPITAL PROGRAM MANAGEMENT STAFF AUGMENTATION

This Agreement is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "Owner") and

FIRM'S NAME
ADDRESS
CITY, ZIPCODE

(hereafter referred to as "Consultant"), said Agreement being executed by Owner pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for Capital Program Management Staff Augmentation for the Henry B. Gonzalez Convention Center Expansion Project and related projects and as set forth herein in connection with the above designated services for Owner.

INDEX

<u>ARTICLE NO.</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE I.	DEFINITIONS	3
ARTICLE II.	CONSULTANT’S RESPONSIBILITIES	4
ARTICLE III.	OWNER’S RESPONSIBILITIES	5
ARTICLE IV.	SCOPE OF SERVICES	6
ARTICLE V.	COMPENSATION.....	6
ARTICLE VI.	METHOD OF PAYMENT.....	7
ARTICLE VII.	SERVICES REQUEST PROCESS.....	9
ARTICLE VIII.	SCOPE OF SERVICES.....	10
ARTICLE IX.	RESERVED	10
ARTICLE X.	TIME AND PERIOD OF SERVICE	10
ARTICLE XI.	INSURANCE REQUIREMENTS	11
ARTICLE XII.	OWNERSHIP OF DOCUMENTS	13
ARTICLE XIII.	TERMINATION AND/OR SUSPENSION OF WORK.....	14
ARTICLE XIV.	INDEMNIFICATION.....	16
ARTICLE XV.	CLAIMS AND DISPUTES	17
ARTICLE XVI.	SBEDA ORDINANCE COMPLIANCE PROVISIONS SECTION	18
ARTICLE XVII.	ASSIGNMENT OR TRANSFER OF INTEREST	27
ARTICLE XVIII.	SEVERABILITY.....	27
ARTICLE XIX.	INTEREST IN OWNER CONTRACTS PROHIBITED	27
ARTICLE XX.	CONFLICTS OF INTEREST DISCLOSURE	28
ARTICLE XXI.	RIGHT OF REVIEW AND AUDIT	28
ARTICLE XXII.	ENTIRE AGREEMENT	28
ARTICLE XXIII.	VENUE	29
ARTICLE XXIV.	NOTICES	29
ARTICLE XXV.	INDEPENDENT CONTRACTOR.....	29
ARTICLE XXVI.	CAPTIONS.....	30
EXHIBIT A.	FEE SCHEDULE.....	31
EXHIBIT B.	SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN.....	32
EXHIBIT C.	SCOPE OF SERVICES.....	33
EXHIBIT D.	GENERAL CONDITIONS.....	38

ARTICLE I. DEFINITIONS

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

- 1.1 “Agreement” means this written document signed by Owner and Consultant, including any other document itemized and expressly referenced in or attached to and expressly made part of this Agreement, to include Consultant’s proposal, to the extent accepted by Owner and not in conflict with the Articles of this Agreement: Scope of Services and Fee Schedule – attached hereto and labeled as **Exhibit A**; and SBEDA Subcontractor/Supplier Utilization Plan – attached hereto and labeled as **Exhibit B**.
- 1.2 “Application for Payment” means the electronic filing by the Consultant requesting to be paid for completed Work and materials stored at site.
- 1.3 “Consultant” means **NAME OF FIRM** and its officers, partners, employees, agents, representatives, Sub-Consultants, if any, and all other persons or entities for which Consultant legally is responsible.
- 1.4 “Consultant’s Schedule of Services” means a detailed listing of the services to be performed and the time sequence for the delivery, to include an estimated dollar value which shall be attached for the payment of the services over the term of this Agreement.
- 1.5 “Certificate of Substantial Completion” means the document issued by Consultant with Owner’s consent at the stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract, so that Owner may occupy or utilize the Work for its intended use.
- 1.6 “City” and “Owner” mean the City of San Antonio, Texas.
- 1.7 “Claim” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, a payment of money, an extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between Owner and Consultant arising out of or relating to this Agreement.
- 1.8 “Compensation” means the amount paid by Owner to Consultant for completed services accepted by Owner under this Agreement.
- 1.9 “Construction Contractor” is the firm hired by Owner to construct the Project.
- 1.10 “Construction Documents” are the complete set of documents approved by Owner for the Work to complete the Project, including the Construction Drawings and Specifications as set out in paragraph 3.10.2 herein.
- 1.11 “Construction Drawings and Specifications” are the documents used to convey the intent of Consultant for the purposes of constructing the Project.
- 1.12 “Director” means the Director of Owner’s Capital Improvements Management Services (hereafter referred to as “CIMS”) Department, or his/her designated Project Manager identified

in the Notice to Proceed.

- 1.13 “Estimated Cost of Work” means Consultant’s estimate of probable construction costs.
- 1.14 “Final Compensation” means the final amounts paid by Owner to Consultant for completed services accepted by Owner and performed by Consultant pursuant to this Agreement.
- 1.15 “Invoice” means written request for compensation from Consultant to Owner for services completed under this Agreement.
- 1.16 “Project” means the capital improvement/construction development undertaking of Owner.
- 1.17 “Proposed Service Plan” means the proposal for Services submitted by Consultant in response to Owner’s request for services.
- 1.18 “SAMSA” means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised by Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.
- 1.19 “Schedule of Values” a schedule, submitted by the Consultant before submitting its first Application for Payment, allocating dollar amounts to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This schedule, unless objected to by Owner, shall be used as the basis for reviewing Consultant’s Applications for Payment.
- 1.20 “Schematic Design Document” shall have the meaning as defined in **Paragraph 3.9.5** of this Agreement.
- 1.21 “Services” means the services performed by Consultant, as required by **Article III** and **Article IV** of this Agreement.
- 1.22 “Total Compensation” means the not-to-exceed amount of this Agreement.
- 1.23 “Work” means the construction work performed by the Construction Contractor.

ARTICLE II. CONSULTANT’S RESPONSIBILITIES

2.1 Consultant shall hold periodic conferences with Director or his/her representatives through the end of each assigned Task so that Consultant has the full benefit of Owner’s experience and knowledge of existing needs and facilities, and so each Project is consistent with Owner’s current policies and standards. To assist Consultant in this coordination, Owner shall make available, for Consultant’s use in planning and designing each Project, all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and to each particular Project at no cost to Consultant. However, any and all such information shall remain the property of Owner and shall be returned by Consultant upon termination or completion of each Project or if instructed to do so by the Director.

2.2 Consultant warrants that Services provided by Consultant under this Agreement will 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 in Bexar County, Texas.

2.3 Unless otherwise required by Owner, Consultant shall apply for and assist Owner in obtaining permits from all governmental authorities having jurisdiction over each Task and such approvals and consents from others as may be necessary for the completion of each Task. Consultant shall provide Owner reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Consultant pursuant to other provisions of this Agreement, and shall appear on behalf of Owner at meetings with governmental entities as may be required, 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.

2.4 Consultant shall be represented by a registered professional Architect or Engineer licensed to practice in the State of Texas at meetings of any official nature concerning each Task including, but not limited to, scope meetings, review meetings, pre-bid meetings, preconstruction meetings and other meetings as required by that particular Task. The Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Suite. 2-350, Austin, Texas 78701, (512) 305-9000 and/or Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

2.5 Consultant shall prepare Change Orders and Field Work Directives and, with concurrence of Owner, have authority to order minor changes in the Work not involving an adjustment in the Total Compensation or an extension of the time for construction, with such changes effected by written order.

2.6 Acceptance of Consultant's services by Owner shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or Sub-Consultants for the accuracy and competency of their designs, drawings, specifications or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by Owner for any defect in the designs, working drawings, specifications or other documents and Work prepared by said Consultant, its employees, Sub-Consultants and agents.

2.7 Consultant 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 warranty, Owner shall have the right to terminate this Agreement under the provisions of **Article XII** I herein.

ARTICLE III. OWNER'S RESPONSIBILITIES

3.1 The Director or a representative appointed by the Director shall act on behalf of Owner, 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 Owner's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Consultant's services.

3.2 Owner shall give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of any defect in Consultant's Services or any development which affects the scope or timing of Consultant's Services.

3.3 Owner reserves the right to contract directly for the services of Geotechnical Engineers, surveyors,

material testing and special testing of materials, as required by the code and Contract Documents. In some instances, however, Owner may request these listed services to be managed by Consultant as an Additional Services. In most instances, Environmental and hazardous waste testing will be contracted by Owner.

ARTICLE IV. SCOPE OF SERVICES

4.1 Consultant understands and agrees that Owner has entered or may enter into multiple Capital Program Management Staff Augmentation agreements with other Consultants and has the authority to assign services at its sole discretion. As stated in **Section 5.4** herein, Consultant understands and agrees that Owner 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 Agreement, Task Order or indefinite delivery Agreement for Capital Program Management Staff Augmentation services and other such related services that may be required of Consultant to provide. Specific requirements as to location, conditions, procedures and associated services pertaining to a Task shall be negotiated and set out in individual Task Orders for each request, which Task Orders are incorporated into and shall become a part of this Agreement.

4.3 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed upon in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested by Owner. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or Sub-Consultants of Consultant.

4.4 Consultant shall not commence service on any Task Order authorized under this Agreement until being thoroughly briefed on the scope of a Project and a Task and being notified by Owner in writing to proceed. Should the scope subsequently change, either Consultant or Owner may request a review of the anticipated services, with an appropriate adjustment in compensation.

4.5 Consultant, in consideration for the compensation herein provided, shall render the professional services described in this **Section IV** and in **Exhibit "C"** hereto necessary for the advancement of the Task and the Project to Substantial Completion.

4.6 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein and in each authorized Task Order, in accordance with the Consultant's Fee Schedule, which is attached hereto, incorporated herein and labeled as **Exhibit "A"**. The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with and approval by Owner, for each authorized Task Order and as provided in this Agreement.

4.7 Consultant's Fee Schedule, which includes pre-priced tasks and/or hourly rates, is incorporated by reference herein, attached hereto and labeled as **Exhibit "A"**.

ARTICLE V. COMPENSATION

5.1 The Compensation for all services included in this Agreement for the initial term of this Agreement **SHALL NOT EXCEED (AMOUNT IN WORDS (\$XXX.XX))**. Extension of this Agreement for three (3) additional one-year "Extension Periods" may increase the total amount of this Agreement to an amount **NOT TO EXCEED (AMOUNT IN WORDS (\$XXX.XX))**.

5.2 Consultant shall submit a Proposed Service Plan for each Task that Owner requests to be performed under this Agreement. Owner either will approve or disapprove each Proposed Service Plan. Owner's approval shall be evidenced by the Finalized Task Order executed by both parties in Owner's Internet-Based Project Management System. Task Orders shall be numbered sequentially starting with number one (1) and must reference this Agreement. Each Finalized Task Order, as entered into Owner's Internet-Based Project Management System, will become a part of this Agreement.

5.3 Consultant understands and agrees that Owner has entered into multiple professional services Agreements with other Consultants and has the authority to assign work tasks at its sole discretion.

5.4 Consultant understands and agrees that Owner makes no minimum guarantees with regard to the amount of services, if any, Consultant may be extended under this Agreement.

5.5 Each Task Order amount shall be based on the Scope of Services for a particular Project and shall be based on the Not-To-Exceed pre-priced tasks and/or hourly rates reflected in “**Exhibit A**” attached hereto.

ARTICLE VI. METHOD OF PAYMENT

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

6.1.1 Payment may be made based solely on the units of services completed and approved by the Director, and the associated unit price for such service as may be described in Consultant’s proposal/fee schedule reflected on **Exhibit “A”** hereto and the approved Task Order.

6.1.2 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, along with all required back-up and reference to the individual Task Order within Owner’s Internet-Based Project Management System. The invoice 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.

6.2 Consultant shall, within ten (10) days following receipt of Compensation from Owner, pay all bills for services performed and furnished by others in connection with the Task and the performance of the Work and shall, if requested, provide Owner with evidence of such payment. Consultant’s failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to Owner a bona fide dispute associated with an unpaid Sub-Consultant and its services. Consultant shall include a provision in each of its Sub-Consultant agreements imposing the same payment obligations on the Sub-Consultants as are applicable to Consultant hereunder and, if Owner so requests, shall provide copies of such payments by Consultant to Owner. If Consultant fails to make payment promptly to a Sub-Consultant for Services for which Owner has made payment to Consultant, Owner shall be entitled to withhold future payments to Consultant to the extent necessary to protect Owner.

6.3 Consultant warrants that title to all Services covered by an Application for Payment will pass to Owner no later than the time of payment. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from Owner shall, to the best of Consultant’s knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONSULTANT.**

6.4 Consultant may submit a request for Partial Compensation prior to Task Order’s completion. A request for Partial Compensation must be accompanied by a progress report detailing Services performed by Consultant. Any partial payment made to Consultant shall be in proportion to the Services performed by

Consultant, as reflected in the progress report and approved by Owner at Owner's sole discretion. Compensation also may be made based solely on the tasks and Services completed and approved by Owner and the associated unit price for each Service/Project, as described in fee schedule and/or hourly rates included on **Exhibit "A"** hereto.

6.5 Task Order Close Out and Final Compensation:

6.5.1 Final billing shall indicate "Final Bill - no additional compensation is due to Consultant".

6.5.2 Owner may withhold compensation to such extent as may be necessary, in Owner's sole opinion, to protect Owner from damage or loss for which Consultant is responsible, because of:

- 6.5.2.1 delays in the performance of Consultant's work;
- 6.5.2.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Consultant;
- 6.5.2.3 failure of Consultant to make payments properly to Sub-Consultants or vendors for labor, materials or equipment;
- 6.5.2.4 reasonable evidence that Consultant's work cannot be completed for the amount unpaid under this Agreement;
- 6.5.2.5 damage to Owner; or
- 6.5.2.6 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

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

- 6.5.3.1 In the event of any dispute(s) between the parties regarding the amount properly compensable for any Phase or as Final Compensation, or regarding any amount that may be withheld by Owner, 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 dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- 6.5.3.2 Owner shall make Final Compensation of all sums due Consultant not more than thirty (30) days after Consultant's execution and delivery of a final Pay Application.
- 6.5.3.3 Acceptance of Final Compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.
- 6.5.3.4 Consultant agrees to maintain adequate books, payrolls and records

satisfactory to Owner 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. At all reasonable times, Owner and its duly authorized Representative(s) shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

6.6 Internet-Based Project Management System. Owner will administer its services through an Internet-Based Project Management System. In such case, Consultant shall conduct communication through this medium and perform all Task-related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, compensation requests and processing, amendment, Change Orders and other administrative activities. Owner shall administer the software, shall provide training to Consultant Team Members and shall make the software accessible via the Internet to all necessary Consultant Team Members. All invoices shall be submitted through Owner's Internet-Based Project Management System

ARTICLE VII. SERVICES REQUEST PROCESS

7.1 Necessary inspection requirements will be established with each Project-specific Task Order.

7.2 When Owner has a Project for which it desires to procure **Capital Program Management Staff Augmentation**, Owner shall notify Consultant by issuing a proposed Task Order Request. Each proposed Task Order Request shall include, at minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposal, Project schedule and any specific deadlines for performance of **Capital Program Management Staff Augmentation**, any Project specific insurance requirements necessitated by the work which may require additional types of coverage or higher levels of coverage than required by the Agreement and a deadline for providing Director with a Proposal based on the above items.

7.3 Consultant shall prepare and submit to Owner, within the timeline stated in a proposed Task Order Request, a Proposal for the desired services which shall include, at minimum: Scope of Services, specific staffing, an estimate of Project cost, based on rates and fees agreed upon and reflected in **Exhibit "A"** hereto and consistent with the approved Fee Schedule. Consultant shall submit the Proposal in editable electronic format to Owner. By submitting a Proposal, Consultant agrees to perform the requested service within the time stated in the proposed Task Order Request.

7.4 Consultant and Owner shall negotiate the Proposal. Once Consultant and Owner reach mutual agreement as to Scope of Services, staffing, scheduling and cost, Owner shall issue a finalized Task Order in Owner's Internet-Based Project Management System, to be executed by both parties evidencing the agreed to scope and costs.

7.5 The Project Manager has the authority to execute a Task Order in Owner's Internet-Based Project Management System on behalf of Owner, 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.

7.6 Consultant shall not proceed with services until a finalized Task Order has been executed, Consultant receives a written Notice to Proceed from Owner and all documents required by Owner in advance of commencement of work, including Consultant's proof of required insurance, have been provided. Any services provided or expenses incurred, prior to receiving a Notice to Proceed or after the expiration of this Agreement on a particular finalized Task Order, will be at Consultant's sole risk and expense and may not be reimbursable by Owner.

7.7 Actual amounts billed shall not exceed the total amount as set out in the finalized Task Order.

7.8 Each Task Order shall be entered into Owner's Internet-Based Project Management System and incorporated herein for all purposes. Each Task Order shall be numbered sequentially starting with number one (1) and must reference this Agreement.

7.9 Consultant shall not invoice for any work associated with a proposed Task Order Request process, including development of Proposal and the associated Task Order negotiation.

ARTICLE VIII. SCOPE OF SERVICES

8.1 Consultant shall hold periodic conferences with Owner through the end of the Task. The Task shall have the full benefit of Owner's experience and knowledge of existing needs and facilities and be consistent with Owner's current policies and standards. To assist Consultant in this coordination, Owner shall make available, for Consultant's use in planning and designing its Task, all existing plans, maps, statistics, computations and other data in Owner's possession, relative to existing facilities and to a particular Task, at no cost to Consultant. However, any and all such information shall remain the property of Owner and shall be returned by Consultant upon termination, the completion of the Task or if instructed to do so by Owner.

ARTICLE IX.

(Reserved)

ARTICLE X. TIME AND PERIOD OF SERVICE

10.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and the execution by both parties and shall remain in force for the period of **four (4) years**, herein referred to as the "Initial Term".

10.2 As the enabling Ordinance provides, Owner shall retain an option to extend this Agreement for **two (2) additional one (1) year periods**, herein referred to as the "Extension Period". The Director shall have the authority to exercise such options at his/her discretion. In the event such options are exercised and any material provision of the Agreement is modified, such amendment must be approved by the City Council.

10.3 Time is of the essence of this Agreement. Consultant shall perform and complete its obligations for the various Tasks of services under **Article IV and EXHIBIT "C"** herein in a prompt and continuous manner so as to not delay the development of the design services and/or so as to not delay the construction of the work for the Project in accordance with the schedules approved by Owner and Construction Contractor. If, upon review of Task Orders, corrections, modifications, alterations or additions are required of Consultant, these items shall be completed by Consultant before that Task Order is approved.

10.4 Consultant shall not proceed with the next appropriate Task Order without written authorization from Owner. Owner may elect to discontinue Consultant's services at the end of any Task Order for any reason. However, if circumstance dictates, Owner may make adjustments to the scope of Consultant's obligations at any time to achieve the required services.

10.5 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 event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to Owner stating the reason for such extension and the actual or estimated time thereof. If

Owner determines that Consultant is responsible for the need for extended time, Owner shall have the right to make a Claim as provided in this Agreement.

10.6 This Agreement shall remain in force for a period which may reasonably be required for the performance of the assigned Task, including any extra work and any required extensions thereto, unless discontinued as provided for elsewhere in this Agreement.

ARTICLE XI. INSURANCE REQUIREMENTS

11.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Capital Improvements Management Services Department, which shall be clearly labeled “**Capital Program Management Staff Augmentation**” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Capital Improvements Management Services Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

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

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. g. Explosion, Collapse, Underground h. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage h. \$100,000
4. Business Automobile Liability	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and

a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

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

City of San Antonio
Attn: Capital Improvements Management Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

11.6.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers’ compensation and professional liability policies;

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

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

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

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

11.8 In addition to any other remedies the City may have upon Consultant’s failure to provide and maintain

any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

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

11.10 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.

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

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

ARTICLE XII. OWNERSHIP OF DOCUMENTS

12.1 All previously owned documents not relating to this Project, including any original drawings, estimates, specifications and all other documents and data of Consultant, will remain the property of Consultant as instruments of service. However, Consultant understands and agrees that Owner shall have free access to all such information with the right to make and retain copies of previously-owned drawings, estimates, specifications and all other documents and data. Any reuse of any documents and data without the specific written verification or adaptation by Consultant shall be at Owner's sole risk and without liability or legal exposure to Consultant.

12.2 All completed documents submitted by Consultant for final approval or issuance of a permit, as necessary, shall bear the seal with signature and date adjacent thereto of a Texas registered Architect or Engineer Consultant licensed to practice in Texas.

12.3 Consultant acknowledges and agrees that, upon payment, Owner 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 Project and Agreement and shall be used as Owner desires. All documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to Owner at no additional cost to Owner upon request or termination or completion of this Agreement without restriction on future use. However, any reuse of documents on a different Project, without specific written verification or adaptation by Consultant, will be at Owner's sole risk and without liability or legal exposure to Consultant.

12.4 Consultant agrees and covenants to protect any and all proprietary rights of Owner 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 Owner. Additionally, any materials provided to Consultant by Owner shall not be released to any third party without the written consent of Owner and shall be returned intact to Owner upon termination or completion of this Agreement or if instructed to do so by the Director.

12.5 CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS AGREEMENT TO OWNER, 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 OWNER (EXCLUDING ANY PRIOR-OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY OWNER AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST OWNER AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST OWNER, 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.

12.6 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 Consultants and/or engineers and/or other persons, subsequent to the completion of the Project. Consultant shall note Consultant's agreement or disagreement with all changes or modifications on all drawings, specifications and other documents by other Consultants and/or engineers or other persons outside of Consultant's control, including electronic copies, prior to the completion of the Project.

12.7 Copies of documents which may be relied upon by Owner are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed (if required) by Consultant. Files in editable electronic media format of text, data, graphics, or other types, (such as .DWG and the REVIT MODEL) which are furnished by Consultant to Owner only are for convenience of Owner or a utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Consultant, will be at Owner's sole risk and without liability or legal exposure to Consultant.

12.8 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 Owner, 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 and/or its suppliers.

ARTICLE XIII. TERMINATION AND/OR SUSPENSION OF WORK

13.1 Right of Either Party to Terminate for Default

13.1.1 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, as provided in this **Article XIII**.

13.1.2 The party not in default must issue a written Notice of Termination, signed by the party and citing this paragraph, to the other party declaring the other party to be in default and stating the reason(s) why it is in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) calendar days to cure any failure to perform under this Agreement. Upon the completion of such 10-day calendar period, commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

13.2 Owner reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a written and signed Notice of Termination, citing this **Section 13.2**, which shall take effect on the twentieth (20th) calendar day following receipt of said Notice and upon the scheduled completion date of the performance phase in which Consultant then currently is working, whichever effective termination date occurs first.

13.3 Owner reserves the right to suspend this Agreement for the convenience of Owner by issuing a written and signed Notice of Suspension, citing this **Section 13.3**, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way guarantee the total number of days of suspension which may occur. Such suspension shall take effect immediately upon Consultant's receipt of said Notice of Suspension.

13.4 Consultant hereby is given the right to terminate this Agreement in the event a suspension extends for a period in excess of sixty (60) consecutive calendar days. Consultant may exercise its right to terminate by issuing a written and signed Notice of Termination, citing this **Section 13.4**, to Owner after the expiration of sixty (60) consecutive calendar days from the effective date of the suspension. Termination, as defined under this **Section 13.4**, shall become effective immediately upon Owner's receipt of said written and signed Notice of Termination from Consultant.

13.5 The procedures which Consultant will follow upon Receipt of Notice of Termination are:

13.5.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise so 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 such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of such notice of termination, unless Consultant successfully has cured a failure to perform, Consultant shall submit a statement to Owner showing in detail the services performed under this Agreement prior to the effective date of termination. Owner shall have the option to grant an extension to the time period allowable for the submittal of such statement.

13.5.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits, if prepared under this Agreement prior to the effective date of termination, shall be delivered to Owner in the form requested by Owner as a pre-condition to Owner's payment of Final Compensation.

13.5.3 Upon the above conditions being met, Owner promptly shall compensate 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 previously paid Compensation.

13.5.4 Owner, as a public entity, has a duty to document the expenditure of public funds and Consultant acknowledges this duty on the part of Owner. To that end, Consultant further acknowledges that the failure of Consultant to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Consultant of any and all rights or Claims to compensation for services performed under this Agreement and for which Consultant otherwise may be entitled for services performed under this Agreement.

13.6 The procedures Consultant is to follow, upon Receipt of Notice of Suspension, are:

13.6.1 Upon receipt of 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.

13.6.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

13.6.3 Copies of all completed or partially completed designs, plans and specifications and models, if prepared under this Agreement prior to the effective date of suspension, shall be prepared for possible

delivery to Owner but shall be retained by Consultant until such time as Owner may exercise the right to terminate this Agreement.

13.6.4 In the event that Consultant elects to exercise its right to terminate one hundred twenty (120) calendar days after the effective suspension date, within thirty (30) days after receipt by Owner of Consultant'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.

13.6.5 Any documents prepared in association with this Agreement shall be delivered to Owner as a pre-condition to Owner paying Final Compensation.

13.6.6 Upon the above conditions being met, Owner promptly shall compensate 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 previously paid Compensation.

13.6.7 Owner, as a public entity, has a duty to document the expenditure of public funds and Consultant acknowledges this duty on the part of Owner. To that end, Consultant further acknowledges that the failure of Consultant to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Consultant of any and all rights or Claims to compensation for services performed under this Agreement and for which Consultant otherwise may be entitled for services performed under this Agreement.

ARTICLE XIV. INDEMNIFICATION

CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT' activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, Consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

ARTICLE XV. CLAIMS AND DISPUTES

15.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, and/or an extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between Owner and Consultant arising out of or relating to this Agreement. Claims must be initiated by written notice to the other party. Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his/her signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

15.2 **Time Limit on Claims.** Claims by Consultant must be initiated within twenty one (21) calendar days after occurrence of the event giving rise to such Claim. Claims by Consultant must be initiated by written notice to Owner. Claims by Owner must be initiated by written notice to Consultant.

15.3 **Continuing Contract Performance.** Pending the final resolution of a Claim, except as otherwise agreed in writing, Consultant shall proceed diligently with performance of this Agreement and Owner shall continue to make payments in accordance with this Agreement.

15.4 **Claims for Additional Time.** If Consultant wishes to make a Claim for an increase in the time for performance, written notice to Owner, as provided in this **Section XV**, shall be given. Consultant's Claim shall include an estimate of probable effect(s) of a delay on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

15.5 **Claims for Consequential Damages.** Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for Breach of Agreement (such provision to survive any termination following such breach), the following standards will apply to Claims by either Consultant or Owner:

15.5.1 No consequential damages will be allowed.

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

15.5.3 No profit will be allowed on any damage Claim by Consultant.

15.6 **No Waiver of Governmental Immunity.** NOTHING IN THIS **SECTION XVI** SHALL BE CONSTRUED TO WAIVE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT. GOVERNMENTAL IMMUNITY EXPRESSLY IS RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.

15.7 **Alternative Dispute Resolution**

15.7.1 **Continuation of Services Pending Dispute Resolution.** Each party is required to continue to perform its obligations under this Agreement, pending final resolution of any dispute arising out of or relating to this Agreement, less it would be impossible or impracticable under the circumstances.

15.7.2 **Requirement for Senior Level Negotiations.** Before invoking mediation or any other alternative dispute process set forth herein, the parties hereto agree that 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 this or 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) calendar days after a party delivers a written notice of such dispute, then the parties shall proceed with mediation alternative dispute resolution process contained herein.

15.7.3 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for the purposes of applicable rules of evidence.

15.8 Mediation.

15.8.1 In the event that Owner 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.

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

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

15.8.4 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 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.

ARTICLE XVI. SBEDA ORDINANCE COMPLIANCE PROVISIONS SECTION

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

A. Definitions

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the Owner requires all prospective Consultants and Sub-Consultants that are ready, willing and able to sell goods or services to Owner to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for

receiving payments from Owner. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

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

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

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

Good Faith Efforts – documentation of Consultant’s or Consultant’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Consultant’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate

trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Consultant's posting of a bond covering the work of SBE or M/WBE Sub-Consultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Consultant; and documentation of consultations with trade associations and Consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Sub-Consultants.) The appropriate form and content of Consultant's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

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

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

Joint Venture – Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture.

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

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

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

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – Owner department or authorized representative of Owner which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Consultants and/or Sub-Consultants and vendors for Owner contracted goods and/or services.

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

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

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

Consultant – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by Ownery. For purposes of this Agreement, Consultant is the Consultant.

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

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

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

SBE Subcontracting Program – an API in which Prime Consultants or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Sub-Consultants.

When specified by the GSC, the *Subcontractor/Supplier Utilization Plan* form submitted by CONSULTANT may also be required to reflect Good Faith Efforts that a Prime Consultant or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

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

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

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

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

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

Sub-Consultant – any vendor or Consultant providing goods and/or services to a Prime Consultant or Consultant in furtherance of the Prime Consultant’s performance under a contract or purchase order

with Owner. A copy of each binding agreement between Consultant and its Sub-Consultants shall be submitted to Owner prior to execution of this contract Agreement and any contract modification Agreement.

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

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

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

B. SBEDA Program Compliance – General Provisions

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

1. Consultant fully shall cooperate with the Small Business Office and other Owner departments in their data collection and monitoring efforts regarding Consultant’s utilization and payment of Sub-Consultants, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely

entry of data into monitoring systems, and ensuring the timely compliance of its Sub-Consultants with this term;

2. Consultant fully shall cooperate with any Owner or SBO investigation (and shall also respond truthfully and promptly to any Owner or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant, its Sub-Consultants or suppliers;
3. Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Sub-Consultants and workers to determine whether there has been a violation of the terms of this Agreement;
4. Consultant immediately shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Subcontractor/Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Sub-Consultant/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Sub-Consultant or supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants, or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO. Consultant shall require new Sub-Consultants or Suppliers, prior to submission of Consultant's Change to Utilization Plan form, to register in the Centralized Vendor Registration system, before seeking SBO approval.
5. Consultant immediately shall notify the Originating Department and SBO of any transfer or assignment of its contract with Owner, as well as any transfer or change in its ownership or business structure.
6. Consultant shall retain all records of its Sub-Consultant payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in Consultant's Subcontractor /Supplier Utilization Plan, Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone Sub-Consultant(s) or joint venture

partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. Consultant acknowledges that Owner will not execute a contract or issue a Notice to Proceed for a Task until Consultant and each of its Sub-Consultants for a Task have registered and/or maintained active status in Owner's Centralized Vendor Registration System, and Consultant has represented to Owner which primary commodity codes each registered Sub-Consultant will be performing under pursuant to this Agreement.

C. SBEDA Program Compliance – Affirmative Procurement Initiatives

Owner has applied the following contract-specific Affirmative Procurement Initiatives (APIs) to this Agreement. Consultant hereby acknowledges and agrees that the selected API requirements shall also be extended to any Change Order or subsequent Contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions is material to its satisfactory performance under this Agreement:

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

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 3. (a), this contract is also being awarded pursuant to the SBE Subcontracting Program. Consultant agrees to subcontract at least **twenty-five (25%)** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor/Supplier Utilization Plan which Consultant submitted to Owner with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Sub-Consultants to be used by Consultant on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Sub-Consultant, and documentation including a description of each SBE Sub-Consultant's scope of work and confirmation of each SBE Sub-Consultant's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Consultant to attain this Sub-Consultant goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with Owner, and may result in debarment from performing future Owner contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, Owner's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis

of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers, or commercial customers, nor shall the company 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 subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in Owner's Relevant Marketplace. Consultant understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in Owner contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to Owner pursuant to the solicitation for this contract 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 Owner contracts.

G. Prompt Payment

Upon execution of this Agreement by Consultant, Consultant shall be required to submit to Owner accurate progress payment information with each Request for Payment regarding each of its Sub-Consultants, including HUBZone Sub-Consultants, to ensure that Consultant's reported subcontract participation is accurate. Consultant shall pay its Sub-Consultants in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten (10) days of receipt of payment from Owner. In the event of Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new Task Orders shall be issued by Owner to Consultant until Owner's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of Consultant or other business firm from eligibility for providing goods or services to Owner for a period not to exceed two years (upon San Antonio City Council approval).

ARTICLE XVII. ASSIGNMENT OR TRANSFER OF INTEREST

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

ARTICLE XVIII. 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. 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 XIX. INTEREST IN OWNER CONTRACTS PROHIBITED

19.1 Consultant acknowledges that no officer or employee of Owner shall have a financial interest, directly or indirectly, in any contract with Owner or shall be financially interested, directly or indirectly, in the sale to Owner of any land, materials, supplies or service, except on behalf of Owner as an officer or employee. This prohibition extends to Owner's Public Service Board, San Antonio Water System and other Owner boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on Owner projects.

19.2 Consultant acknowledges that it is informed that the Charter of Owner and its Ethics Code prohibit an officer or employee of Owner, as those terms are defined in the Ethics Code, from having a financial interest in any contract with Owner or any Owner agency, such as Owner-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with Owner or in the sale to Owner of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: (1) an Owner officer or employee; his parent, child or spouse; (2) a business entity in which the officer or employee, or his 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; and/or (3) a business entity in which any individual or entity above listed is a Sub-Consultant on an Owner contract, a partner or a parent or subsidiary business entity.

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

ARTICLE XX. CONFLICTS OF INTEREST DISCLOSURE

Consultant must disclose if it is associated in any manner with an Official or employee of Owner in a business venture or business dealings. Failure to do so will constitute a violation of City of San Antonio Ordinance No. 76933. To be "associated" in a business venture or business dealings includes:

- (1) being in a partnership or joint venture with the official or employee;
- (2) having a contract with the official or employee;
- (3) being joint owners of a business; or
- (4) owning at least ten percent (10%) of the stock in a corporation in which an official or employee also owns at least ten percent (10%), or having an established business relationship as client or customer.

ARTICLE XXI. RIGHT OF REVIEW AND AUDIT

21.1 Consultant grants Owner and its designee(s) the right to audit, examine or inspect, at Owner's election, all of Consultant's records relating to the performance of the Work under this Agreement during the term of this Agreement and during the retention period herein. The audit, examination or inspection may be performed by a Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Consultant agrees to retain its records for a minimum of four (4) years, following the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data, of every kind and character, generated as a result of the Work under 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 any issue in question, and any and all other agreements, sources of information and matters which may, in Owner's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

21.2 Owner agrees that it will exercise the right to audit, examine or inspect only during regular business hours. Consultant agrees to allow Owner's designee access to all of Consultant's Records, facilities and current or former employees of Consultant deemed necessary by Owner or its designee(s) to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate Work space necessary to Owner or its designees to conduct such audits, inspections or examinations.

21.3 Consultant shall include this audit clause in any Sub-Consultant, Sub-Consultant, supplier or vendor contract.

ARTICLE XXII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement between Owner and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement only may be amended by written instrument signed by both Owner and Consultant.

ARTICLE XXIII. VENUE

The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

ARTICLE XXIV. NOTICES

Except as may be provided elsewhere herein, all notices, communications and reports, required or permitted under this Contract, shall personally be delivered or mailed to the respective party by depositing the same in the United States Postal Service, addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) days of mailing.

If intended for Owner, to:

Capital Improvements Management
Services Department

Attention: Contract Services
114 West Commerce, 9th Floor
San Antonio, Texas 78205

With a copy to:

Capital Improvements Management
Services Department
Attention: City Consultant's Office
114 West Commerce, 4th Floor. Room 412
San Antonio, Texas 78205

If intended for Consultant, to:

FIRM'S NAME

Attention: **NAME**
FIRM'S ADDRESS

ARTICLE XXV. INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between Owner and Consultant is that of independent contractor. By the execution of this Agreement, Consultant and Owner do not change the independent contractor status of Consultant. Consultant shall exercise independent judgment in performing its duties and obligations under this Agreement and solely is responsible for setting working hours, scheduling or prioritizing the workflow and determining how the Services are to be performed. No term or provision of this Agreement, or act of Consultant in the performance of this Agreement, shall be construed as making Consultant the agent, servant or employee of Owner or as making Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and/or Worker's compensation, which Owner provides to or for its employees.

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.

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

Executed on this ____ day of _____, _____

CITY OF SAN ANTONIO

FIRM NAME

PETER ZANONI
ASSISTANT CITY MANAGER

NAME
TITLE

APPROVED:

CITY ATTORNEY

DRAFT

EXHIBIT A. FEE SCHEDULE

DRAFT

EXHIBIT B. SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

DRAFT

EXHIBIT C. SCOPE OF SERVICES

The scope of services is to provide CIMS with Program Management Staff Augmentation on an as-needed basis for the Henry B. Gonzalez Convention Center Expansion Project and related projects. The main areas of expertise required include the following:

1. Program Management
2. Construction Management
3. Design Review/Management
4. Construction Inspection
5. Project Controls
 - Cost
 - Primavera Scheduling Review and Tracking
 - Master Scheduling (all projects)
 - Estimates
 - Change Orders (review and negotiation)
6. Environmental
 - Cultural Resources
 - Site Assessments
 - Hazmat
7. Office Management
 - Document Control
 - Meeting Facilitation
 - Presentation Preparation
8. Material Testing for Quality Assurance
9. Public Relations

At least one member of the Team must be a registered Architect with a minimum of five (5) years of experience in large-scale facilities (preferably over \$100,000,000). At least one member of the Team must have a license to practice engineering in the State of Texas as a Professional Engineer and have at least five (5) years of commercial project management experience. At least one member of the Team must have knowledge and experience using BIM and Primavera.

Below is a more detailed description of each expertise area:

Program Management

Program Management is the application of knowledge, skills, tools and techniques across multiple interrelated projects to obtain the overall program objectives and requirements. Program Management may be responsible for, but not limited to, any of the following activities:

- 1) Monitoring;
- 2) Budgeting;
- 3) Coordinating;
- 4) Analyzing;
- 5) Representation;
- 6) Other related duties and responsibilities as presented.

Construction Management

Construction Management may be responsible for, but not limited to, any of the following activities:

- 1) Performing detailed engineering calculations;
- 2) Preparing analysis report;
- 3) Performing site assessments;
- 4) Evaluating and tracking performance of contractors;

- 5) Assisting with responding to citizen inquiries and complaints;
- 6) Providing technical assistance;
- 7) Reviewing plans;
- 8) Reviewing specifications;
- 9) Reviewing MEP design;
- 10) Coordinating with other divisions, departments or municipal agencies;
- 11) Reviewing Project elements for building, safety and other required codes;
- 12) Reviewing and advising on ADA requirements;
- 13) Assisting with constructability reviews;
- 14) Attending construction progress meetings, as requested;
- 15) Assisting with monthly status reports;
- 16) Assisting with Project close-out process, including gathering of warranties and owner's manuals;
- 17) Perform related duties and fulfill responsibilities, as presented.

CIMS will require construction management services to augment staff in the delivery of Convention Center Project and related projects on time and within budget. Coordination with Project team members, ensuring objectives are focused on the overall schedule and Project deliverables is a must.

Design Review & Management

Design Review & Management may be responsible for, but not limited to, any of the following activities:

- 1) Reviewing plans;
- 2) Reviewing specifications;
- 3) Reviewing MEP Design;
- 4) Reviewing and assisting with permitting requirements;
- 5) Reviewing Project elements for building, safety and other required codes;
- 6) Reviewing and advising on ADA requirements;
- 7) Assisting with constructability reviews;
- 8) Providing conceptual sketches;
- 9) Assisting with analysis of architectural design;
- 10) Reviewing FF&E requirements;
- 11) Attending design review meetings, as requested;
- 12) Assisting with monthly status reports;
- 13) Performing related duties and fulfilling responsibilities, as presented.

Construction Inspection Services

Construction Inspection Services may be responsible for, but not limited to, any of the following activities:

- 1) Monitoring and documenting job site safety;
- 2) Monitoring and documenting the Storm Water Pollution Prevention Plan (SWPPP) best management practices and posted notifications;
- 3) Attending on-site construction meetings, as requested;
- 4) Coordinating with Owner facilities and operations when utility outages, noise control, traffic control or security are required by the Work;
- 5) Conducting daily observation of construction Work for compliance with approved contract drawings, specifications, requests for information, change order proposals, approved submittals and shop drawings;
- 6) Reviewing contractor submittals and coordinate Owner comments (including resolving conflicts);
- 7) Issuing daily observation reports for site and building, noting conditions of non-compliance, with proper references to detailed drawings and specifications sections;
- 8) Attending early morning, evening or after-hours installations requiring Owner representation;
- 9) Maintaining and organizing on-site Project documentation;
- 10) Reviewing and approving monthly Contractor payment application, including survey construction progress to confirm percent complete by trades;
- 11) Coordinating and monitoring material testing, HVAC air testing and balancing and other systems testing;
- 12) Monitoring the Project commissioning process, including equipment testing, functional performance tests and building integration of inter-related systems;
- 13) Monitoring deficiency logs to assure follow up of re-testing and system performance;

- 14) Assisting the Project Manager in resolving construction issues;
- 15) Documentation of site investigation through photos and reporting;
- 16) Attending pre-installation meetings between the Contractor and Owner, prior to start of roofing, glazing, pre-cast panels, curtain wall, waterproofing, foundations, structural framing and other systems, as required by specifications;
- 17) Monitoring punch lists for above ceiling, open wall and Substantial Completion inspections and confirm completion of deficiencies;
- 18) Remaining current in codes and regulations applicable to design and construction;
- 19) Interfacing with, and providing support to Owners Representatives, Users operations, design professionals, contractors, utilities and regulatory agencies to assist with resolution of construction phase conflicts;
- 20) Monitoring project close-out procedures, including O&M manuals, as-builts, punch lists and warranty walk-through;
- 21) Assisting the Project Manager in the 1-year warranty process;
- 22) Performing related duties and fulfilling responsibilities, as presented.

It is requested that specific construction inspectors are available who have expertise, as evidenced by appropriate credentials, in the following specialties:

Underground utilities and site preparation
Concrete (structural and flatwork)
Structural Steel
Heating, Ventilation and Air-Conditioning (HVAC)
Electrical and Data
Architectural Finishes
Security
Audio-Visual (AV)
Information Technologies (IT)

Project Controls

Project Controls may be responsible for, but not limited to, any of the following activities:

- 1) Reviewing cost estimates;
- 2) Supporting Owner Project Manager, reviewing and providing comments on schedules submitted by Consultants, Contractors and others for conformance with scheduling requirements and policies, consistency with Project/construction plans and phasing, executability, proper resource allocation and other schedule-related requirements;
- 3) Validating progress on Project schedule;
- 4) Coordination between Project teams regarding schedules;
- 5) Budgetary cost estimate preparation;
- 6) Reviewing and negotiating change orders;
- 7) Assisting with Project budget analysis;
- 8) Assisting with BIM requirements and review;
- 9) Performing related duties and fulfilling responsibilities, as presented.

Environmental

Environmental may be responsible for, but not limited to, any of the following activities:

- 1) Compliance with the Texas Antiquities Code and Section 106 of the National Historic Preservation Act;
- 2) Texas Archeological Research Laboratory search/background reviews/constraints analysis;
- 3) Archeological survey(s);
- 4) Testing to determine a site's potential to the National Register of Historic Places or as State Archeological Landmarks (SALs);
- 5) Hazmat investigation/survey and specification writing;
- 6) Hazmat remediation oversight;
- 7) Geo-archeological investigation;
- 8) Photo and report documentation of site analysis;
- 9) Native American Grave Protection and Repatriation Act Compliance;

- 10) Historical standing structure surveys;
- 11) Cultural resources mitigation, if needed;
- 12) Archeological monitoring during construction, if needed;
- 13) Historical and archival backgrounds;
- 14) Artifact curation;
- 15) Health and safety code compliance, as it pertains to cemeteries;
- 16) Phase I Environmental Site Assessments (ESAs) – due diligence assessments of property and proposed projects based on historical and visual cues to identify potential environmental impairments;
- 17) Phase II ESAs – subsurface environmental investigations intended to confirm and/or delineate the extent of contamination using sampling and laboratory analyses;
- 18) Environmental remediation/clean-up and design – the preparation of waste management plans, oversight of environmental remediation projects, and analyses to determine risk associated with soil or groundwater contamination;
- 19) Performing related duties and fulfilling responsibilities, as presented.

Office Management

Office Management may be responsible for, but not limited to, any of the following activities:

- 1) Preparing meeting agendas;
- 2) Scheduling of meetings, presentations, phone conferences, etc.;
- 3) Preparing all Project correspondence;
- 4) Electronic and hard-copy file organization and maintenance;
- 5) Coordinating Team schedules;
- 6) Preparing Project presentations;
- 7) Meeting facilitation;
- 8) Coordinating Project teams, Owner departments and other stakeholders;
- 9) Maintaining and coordinating the procurement of office supplies;
- 10) Performing related duties and fulfilling responsibilities, as presented.

Material Testing for Quality Assurance

Material Testing may be responsible for, but not limited to, any of the following activities:

- 1) Maintaining the Project Log of all testing performed.
- 2) Geotechnical Engineering: Geotechnical Site Investigation Services;
- 3) Geotechnical Engineering: Geotechnical Laboratory Testing;
- 4) Special Inspections;
- 5) Construction Materials Testing: Materials Testing and Inspection as required by 2009 International Building Code and City of San Antonio Amendments;
- 6) Engineering or scientific interpretation, field and laboratory services and reports as required by Owner.

Testing reports shall include:

Report date;

Date of service, project title, limits, who ordered test and who performed test;

Testing lab letterhead with authorized signature – professional engineer, or appropriate licensed professional required by law in charge or his delegated assistant;

Report identification number (sequential numbering), description, price, quantity performed and location;

Test results;

Contract standards controlling the test(s);

Assessment - Compliance or noncompliance with the specifications;

Any extenuating circumstances affecting the test(s) or results(s);

7) Performing related duties and fulfilling responsibilities, as presented.

Public Relations

Public Relations may be responsible for, but not limited to, any of the following activities:

- 1) Preparing press releases;
- 2) Assisting with public meetings, if needed;
- 3) Assisting with citizen inquires;
- 4) Assisting with developing marketing materials/presentations;
- 5) Performing related duties and fulfilling responsibilities, as presented.

DRAFT

EXHIBIT D. GENERAL CONDITIONS

DRAFT