INTERLOCAL COOPERATION AGREEMENT
TO PROVIDE PLANNING SUPPORT SERVICES

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, and Texas Engineering Extension, an agency of the State of Texas, by and through its Director ("TEEX"), both of which may be referred to herein collectively as the "Parties." This agreement is authorized under the authority of Chapter 791 of the Texas Government Code, which provides that local governments and political subdivisions of the state may execute interlocal cooperation contracts to reduce their vulnerability to acts which threaten governmental functions such as providing homeland security.

I. PURPOSE

The purpose of this agreement is to provide the City of San Antonio with on-site, full time planning support services.

II. TERM

2.1 This Agreement shall commence on January 1, 2010 and terminate on December 31, 2010. The Emergency Management Coordinator of the Office of Emergency Management is authorized to extend renew this Contract under the same terms and conditions for up to three (3) consecutive one-year periods. All renewals shall be in writing and authorized by both Parties and signed by the Emergency Management Coordinator (EMC), or designee.

2.2 TEEX and City recognize that the continuation of any Agreement after the close of any given fiscal year of the City, which fiscal year ends on September 30th, shall be subject to appropriation of funds for the Agreement. Should funds not be appropriated, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

SCOPE OF SERVICES

3.1 For the duration of this Agreement, TEEX's National Emergency Response and Rescue Training Center (NERRTC) will provide one on-site, fulltime staff ("NERRTC Staff") to the City of San Antonio Office of Emergency Management ("COSA OEM"). NERRTC Staff will support the COSA OEM with emergency operations planning, training and exercise support. NERRTC Staff will have the emergency management, administrative, communication and writing capabilities to conduct emergency management planning activities.

General tasks conducted by TEEX/NERRTC include but are not limited to the following:

- At the direction of COSA OEM, the NERRTC Staff will execute planning and technical assistance activities.
- Research federal, state, and local government, and private sector organizations and benchmark best practice in the format and content of response plans similar in purpose and scope to that required to be developed as part of this agreement.
- The NERRTC Staff will, at the direction or on recommendation to COSA OEM, provide scheduling, support, planning, preparation, logistics and facilitation for meetings with internal and external participants involved in any of the planning initiatives.
- Assist as necessary in the conduct of workshops, tabletop exercises, and functional exercises as necessary to test planning assumptions and operational responses, and otherwise inform the planning process.
- The NERRTC Staff will be supported by and have access to subject matter experts within NERRTC and TEEX.
- The NERRTC Staff will be a liaison between COSA OEM and NERRTC for planning, training and exercise activities.
- Work will be performed at the COSA OEM offices site between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, unless otherwise directed.

- No work shall be performed at the site on a legal State or National holiday unless specifically directed/cleared by the Emergency Management Director or designee.

The Receiving Agency (COSA-OEM) will:

- Provide NERRTC with existing plans, protocols, guidelines and any other documentation necessary to conduct the required work.
- Access to the appropriate personnel necessary to conduct the required work.
- Provide the NERRTC Staff with an appropriate office and furniture, a telephone, a computer and peripherals with access to the internet, access to copy machine, fax machine and printer(s) suitable to conduct the assigned work.
- Physical access to the facilities.

IV. COMPENSATION TO TEEX/NERRTC

4.1 For the performance of these services, City agrees to pay TEEX an amount not to exceed one-hundred, ten thousand dollars ($110,000.00) as total compensation.

4.2 The parties agree that all compensable expenses of TEEX have been provided for in the total payment to TEEX specified above.

4.3 Final acceptance of the products and services provided by TEEX require written approval by the EMC or designee. City will be invoiced and Payment will occur monthly at the end of each month during the contract period. City is not liable under this Agreement to any party, other than TEEX.

V. OWNERSHIP OF DOCUMENTS

5.1 To the extent TEEX possesses the right to do so, the City shall have unlimited rights to any materials distributed by TEEX pursuant to the provisions of this Agreement.

VI. RECORDS RETENTION

6.1 TEEX must maintain all documents and records pertaining to the services rendered through this agreement, and make them available to the City at their respective offices, during the Agreement period, including any extension or renewal period during the record retention period.

6.2 TEEX shall retain any and all documents produced as a result of their services for four (4) years from the date of termination of the Agreement or if there is litigation or other questions arising from, the services provided by TEEX.

6.3 TEEX must notify City, immediately, in the event TEEX receives any requests for information from a third party, which pertain to the documentation and records referenced herein. The City will process and handle all such requests.

VII. TERMINATION

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

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

Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of an event it deems gives it cause or for failure to cure an event where the City has granted TEEX an opportunity to cure a default.

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

7.5 Regardless of how this Agreement is terminated, TEEX shall within 30 days effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by TEEX/NERRTC, or provided to TEEX/NERRTC, hereunder, regardless of storage

medium, if so requested by City, or shall otherwise be retained by TEEX/NERRTC in accordance with Article VI. Records Retention.

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

VIII. NOTICE

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

<u>If intended for City, to</u>:

City of San Antonio
Attn: Nim Kidd, District Fire Chief
Emergency Management Coordinator
Office of Emergency Management
P.O. Box 839966
San Antonio, Texas 78283-3966

<u>If intended for TEEX/NERRTC, to:</u>

Texas Engineering Extension Service
Attn: Harrison Lobdell
Division Director
301 Tarrow
College Station, TX 77840-7896

IX. INSURANCE

9.1 Insurance for the Texas Engineering Extension Service, a member of The Texas A&M University System, is provided for as follows: The Texas A&M University System and its members are self-insured for Workers Compensation Insurance as provided by Tex. Lab. Code Ch. 502. The Texas A&M University System is insured under an automobile policy and its liability for personal injury and property damage is as provided by Tex. Civ. Prac. & Rem. code Ann. Ch. 101.

X. CLAIMS

10.1 TEEX and the CITY acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

10. 2 This agreement will be interpreted according to the Constitution and laws of the State of Texas. in accordance with Texas Ed. Code Sec. 85.15, venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas. This agreement is made and is to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

10.3 No Joint Enterprise. There is no intention on the part of the parties hereto to create or otherwise form a joint enterprise under or pursuant to this Agreement. The Parties to this Agreement are undertaking a governmental function or service. The Parties to this Agreement do not have a pecuniary purpose, let alone a common one. The purpose of this Agreement is to further the public good, not to gain a profit. The Parties do not have an equal right of control. The City of San Antonio's Office of Emergency management has a superior right to control the direction and management of the enterprise solely for liability purposes under the Agreement and/or solely by virtue of its responsibility for the day-to day management and control of the premises.

10.4 The parties to this agreement are carrying out a homeland security activity through the terms of this agreement. They claim all immunity from liability afforded to them for their good faith acts in carrying out the terms of this agreement under the terms of Chapter 421 of the Texas Government Code.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 TEEX shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of TEEX, and not subcontractors.

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

XII. INDEPENDENT CONTRACTOR

12.1 TEEX agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that TEEX shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall, to the extent allowed by the laws and Constitution of the State of Texas and without waiving sovereign immunity, be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

12.2 TEEX also agrees that the doctrine of respondent superior shall not apply as between City and TEEX, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and TEEX. The parties agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the TEEX under this Agreement and that the TEEX has no authority to bind the City.

XIII. HUB SUBCONTRACTING

13.1 As an agency of the State of Texas, TEEX's policies and procedures for purchasing from small economically disadvantaged minority and woman-owned businesses (Historically Underutilized Businesses) follow the directives of the State of Texas (Texas Administrative Code Title 1, Part 5, Chapter 111,

Subchapter B, entitled "Historically Underutilized Business Program" (http://lamb.sos.state.tx.us/tac/).

XIV. CONFLICT OF INTEREST

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

XV. SEVERABILITY

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

XVI. LICENSES/CERTIFICATIONS

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

XVII. COMPLIANCE

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

XVIII. LAW APPLICABLE

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

XIX. ENTIRE AGREEMENT

19.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon.

EXECUTED and AGREED to this the _____ day of _____, 2009.

CITY:
CITY OF SAN ANTONIO

_____
Nim Kidd
Emergency Management Coordinator
Office of Emergency Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

TEEX:

_____
Harrison Lobdell
Division Director
TEEX/NERRTC
College Station, Texas 77840-7896

Approved as to Form:

_____
City Attorney