

ORDINANCE 2019-06-20-0554

APPROVING FEDERAL REPRESENTATION SERVICES CONTRACTS FOR AN INITIAL TERM FROM JUNE 1, 2019 THROUGH DECEMBER 31, 2020 WITH THE OPTION TO EXTEND FOR ONE, TWO-YEAR PERIOD, UPON APPROVAL BY CITY COUNCIL WITH: A) CLARK HILL STRASBURGER IN A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$716,638 AND THE NORMANDY GROUP IN A TOTAL AMOUNT NOT TO EXCEED \$358,319 FOR D.C. BASED SERVICES, AND; B) SERNA AND SERNA PLLC IN A TOTAL AMOUNT NOT TO EXCEED \$161,250 FOR LOCAL LIAISON SERVICES.

* * * * *

WHEREAS, the City of San Antonio has retained consultants to represent its federal interests in Washington, D.C. since 1994 to support and strengthen the City’s advocacy efforts with federal agencies, members of Congress, and the Administration to advance legislation and seek federal funding that is beneficial to the San Antonio community; and

WHEREAS, two Requests for Proposals for federal representation services was issued December 21, 2018, one for a Washington, D.C.-based representative and the other for a local liaison and a total of nine proposals for the D.C.- based representative and three for the local liaison were received in response to the solicitation; and

WHEREAS, an evaluation committee consisting of staff from the City Manager’s Office, Government & Public Affairs Department, Aviation Department, a member of the Alamo Federal Executive Board and a representative from VIA Metropolitan Transit met to review and score the submissions and shortened both lists before conducting interviews; and

WHEREAS, based on the interviews and evaluation criteria set out in the RFP, Clark Hill Strasburger and the Normandy Group received the highest scores for D.C.-based representatives and Serna and Serna received the highest score for the local liaison from the evaluation committee; and

WHEREAS, staff presented its recommendation to award a contract to Clark Hill Strasburger, the Normandy Group and Serna and Serna, PLLC to the City Council Intergovernmental Relations Committee on June 12, 2019 and the Audit and Accountability Committee on June 18, 2019 and the IGR Committee voted to forward staff’s recommendation to the full City Council for consideration; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the two-year Federal Representation Services Agreement with Clark Hill Strasburger in a monthly amount of \$16,666.00; and the Normandy Group, in a monthly amount of \$8,333.00, both with one two-year renewal term at the option of the City Council, are authorized and approved. The City Council may approve the renewal by subsequent ordinance. The City Manager or designee is authorized to sign the Agreements, attached to this Ordinance as **Exhibit A.** Fully executed copies shall be subsequently attached.

SECTION 2. The terms and conditions of the two-year Federal Representation Services- Local Liaison Agreement with Serna and Serna, PLLC in a monthly amount of \$3,750.00, with one two-year renewal term at the option of the City Council, is authorized and approved. The City Council may approve the

renewal by subsequent ordinance. The City Manager or designee is authorized to sign the Agreement, attached to this Ordinance as **Exhibit B**. A fully executed copy shall be subsequently attached.

SECTION 3. Funding for this ordinance is available as part of the Fiscal Year 2019 budget approved by City Council as shown in the table below:

Amount	General Ledger No.	Cost Center	Fund No.
\$75,000.00	5201040	1208010001	11001000
\$40,000.00	5201040	3305010001	51001000
Total Amount \$115,000.00			

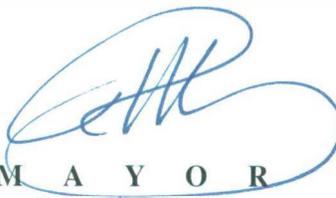
Section 4: Additional funding is contingent upon City Council approval of subsequent budgets within the term length of this contract.

Section 5: Payment not to exceed the budgeted amount is authorized to Clark Hill Strasburger and The Normandy Group for Washington D.C.-based representation services, and Serna and Serna PLLC for local liaison services.

Section 6: The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 20th day of June, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Andrew Segovia, City Attorney

Agenda Item:	28 (in consent vote: 4, 5, 6, 7, 8, 9, 10A, 10B, 11A, 11B, 12, 13, 14, 16, 17, 18, 19A, 19B, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38A, 38B, 39A, 39B, 39C, 39D, 41, Z-2)
Date:	06/20/2019
Time:	10:19:52 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving federal representation services contracts for an initial term from June 1, 2019 through December 31, 2020 with the option to extend for one, two-year period, upon approval by City Council with: A) Clark Hill Strasburger in a total contract amount not to exceed \$716,638 and The Normandy Group in a total amount not to exceed \$358,319 for D.C. based services, and; B) Serna and Serna PLLC in a total amount not to exceed \$161,250 for local liaison services. [Carlos Contreras, Assistant City Manager; Jeff Coyle, Director, Government & Public Affairs]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Jada Andrews-Sullivan	District 2		x				
Rebecca Viagran	District 3		x				x
Dr. Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				

CWK
06/20/19
Item No. 28

Exhibit A

**PROFESSIONAL SERVICES AGREEMENT
FOR
FEDERAL REPRESENTATION 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 Clark Hill PLC (dba Clark Hill Strasburger (“Consultant”), both of which may be referred to individually as a “Party” or collectively as the “Parties”.

The Parties severally and collectively agree, and by the execution are bound, to the mutual obligations contained and to the performance and accomplishment of the tasks described in this Agreement.

I. DEFINITIONS

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

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

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

“Director” shall mean the Director of City’s Government & Public Affairs Department.

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall commence on June 1, 2019 and terminate on December 31, 2020. City has the right to renew for an additional two-year term upon City Council approval.
- 2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

- 3.1 Consultant shall be responsible for the services and tasks set forth in this Agreement. City reserves the right to engage additional consultants to provide federal legislative services during the terms of this Agreement should the need arise. The following

- 3.1.7 At the request of the Director, produce, submit for City review, and distribute to Director indicated parties, a written update on the status of the City's Federal Legislative Program issues;
- 3.1.8 Provide monthly written reports on actions taken on the City's behalf and execution of strategic plans to the Director, the City Manager, or their designee, for approval. The reports will cover activities undertaken during the prior month to include: 1) time-sensitive legislative updates pertaining to City's priority initiatives; 2) all official contacts with members of Congress, their staffs, members of the executive branch, their staff and any other relevant contacts with any other federal agencies, boards and commissions, the National League of Cities, and U.S. Conference of Mayors;
- 3.1.9 Attend meetings with City Council Committees as requested by the Director, the City Manager, or their designee. At these meetings, Consultant will provide a comprehensive oral report of federal initiatives, strategic plans and their legislative/regulatory status. Consultant will be available, during visits to San Antonio, to meet with city staff, for site visits and project updates;
- 3.1.10 Host at least two gatherings, in coordination with the Director or his designee, of City Council members and City staff with key members of Congress, including Bexar County, Texas and national delegation members, with members of the Administration, and/or the Agency heads in the Executive branch to advance the City's federal initiatives. At least one meeting will be held in Washington, D.C. Consultant shall submit the invitation list for each gathering to the Director, the City Manager, or their designee, for approval;
- 3.1.11 Maintain regular contact with the National League of Cities and U.S. Conference of Mayors; and
- 3.1.12 Perform such other services as directed by the Director, the City Manager, or their designee, and when requested, provide information to City Council in a timely manner to allow City Council to make informed decisions relative to legislative and regulatory matters that may arise.
- 3.2 City may, at any time and in its sole discretion, assign additional legislative and regulatory matters to Consultant that are not part of the City's federal initiatives.
- 3.3 All work performed by Consultant shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Consultant which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated in this Agreement, even should City elect not to terminate.

property of City. Consultant shall turn over to City all such records and shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

- 5.4 Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention.

VI. RECORDS RETENTION

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period and the record retention period for purposes of audit, inspection, examination, and making excerpts or copies by City and any of its authorized representatives.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided for a period of four years ("retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during the retention period. City may, at its election, require Consultant to return the documents to City prior to or at the conclusion of the retention.
- 6.3 Consultant shall notify City immediately in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions of this Agreement.
- 7.2 Termination Without Cause. This Agreement may be terminated by either Party upon 10 calendar days' written notice provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice provided in accordance with Article VIII. Notice City may terminate this Agreement as of the date provided in the notice, in whole

- 7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
Attn: Jeff Coyle
Government & Public Affairs Department
506 Dolorosa, Building 2
San Antonio, Texas 78205

If intended for Consultant, to:

Clark Hill PLC (dba Clark Hill Strasburger)
Attn: Kevin F. Kelly, Member
1001 Pennsylvania Avenue, NW,
Suite 1300 South
Washington, D.C. 20004

IX. INSURANCE

- 9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Intergovernmental Relations Department, which shall be clearly labeled "**Federal Representation Services**" 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. 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 City. City shall have no duty to pay or perform

shall provide the City with the 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.

- 9.5 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 required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided in Article VIII above within 10 calendar days. Consultant shall pay any costs incurred resulting from provision of these documents.
- 9.6 Consultant agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as 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;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.
- 9.7 Within five 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.
- 9.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Consultant to stop work, and/or withhold any payment(s) which become due to Consultant until Consultant demonstrates compliance with the requirements of this Agreement.

indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XI. INTELLECTUAL PROPERTY

- 11.1 Consultant shall pay all royalties and licensing fees related to its work under this Agreement. **Consultant shall hold City HARMLESS and INDEMNIFY City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used under this Agreement. Consultant shall defend City in all suits for infringement of any intellectual property rights under this Agreement.** Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an intellectual property right, Consultant shall promptly give such information to City.
- 11.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately either:
- 11.2.1 Obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
 - 11.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
 - 11.2.3 Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.
- 11.3 Consultant further agrees to:
- 11.3.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement; and

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

XIII. INDEPENDENT CONTRACTOR

- 13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of Consultant superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or a joint-venture between City and Consultant. The Parties understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. CONFLICT OF INTEREST

- 14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- (i) a City officer or employee;
 - (ii) his parent, child or spouse;
 - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
 - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. City relies on Contractor's verification. If found to be false, City may terminate this Agreement for material breach, without providing the opportunity to cure.

- 17.4 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City relies on Consultant's certification. If found to be false, or if Consultant is identified on that list during the course of its contract with City, City may terminate the Contract for material breach.

XVIII. NONWAIVER OF PERFORMANCE

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

CITY OF SAN ANTONIO

**CLARK HILL PLC
(dba CLARK HILL STRASBURGER)**

Carlos J. Contreras, III
Assistant City Manager

Kevin F. Kelly
Member

Approved as to Form:

City Attorney

DRAFT

**PROFESSIONAL SERVICES AGREEMENT
FOR
FEDERAL REPRESENTATION 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 The Normandy Group LLC (“Consultant”), both of which may be referred to individually as a “Party” or collectively as the “Parties”.

The Parties severally and collectively agree, and by the execution are bound, to the mutual obligations contained and to the performance and accomplishment of the tasks described in this Agreement.

I. DEFINITIONS

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

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

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

“Director” shall mean the Director of City’s Government & Public Affairs Department.

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall commence on June 1, 2019 and terminate December 31, 2020. City has the right to renew for an additional two-year term upon City Council approval.
- 2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

- 3.1 Consultant shall be responsible for the services and tasks set forth in this Agreement. City reserves the right to engage additional consultants to provide federal legislative services during the terms of this Agreement should the need arise. The following

- 3.1.4 Provide monthly written reports on the Aviation priorities in the Federal Legislative Program and strategic plans to the Aviation Director, Director, or their designee. The reports will cover activities undertaken during the prior month to include: 1) time-sensitive legislative updates pertaining to City's priority initiatives; 2) all official contacts with Members of Congress, their staffs, members of the Executive Branch, their staff and any other relevant contacts with any other federal Agencies, Boards and Commissions, aviation and airline associations, the National League of Cities, and U.S. Conference of Mayors;
- 3.1.5 Provide timely information and guidance on federal funding, identify notice of funding opportunities to support City Aviation programs and services, advocate on behalf of grant applications and support federal consideration of City applications. Conduct research and develop contracts and relationships to identify unique funding opportunities to support City Aviation program, services, and priorities;
- 3.1.6 Perform such other services as directed by the Aviation Director, Director, or their designee, and when requested, provide information to City Council, in a timely manner, so as to allow City Council to make informed decisions relative to legislative and regulatory matters that may arise and may not be included in the Federal Legislative Program.
- 3.2 City may, at any time and in its sole discretion, assign additional legislative and regulatory matters to Consultant that are not part of the City's federal initiatives.
- 3.3 All work performed by Consultant shall be performed to the satisfaction of the Aviation Director and Director. The determination made by the Directors shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Consultant which is not satisfactory to the Directors. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to the Directors; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated in this Agreement, even should City elect not to terminate.
- 3.4 Performance measures. A matrix indicating performance measures which will be utilized in evaluating the performance of Consultant on a monthly basis will be incorporated to this agreement as Exhibit I. Performance measures will be developed by the Director and agreed to by the parties within one month of signing of the agreement. Such measures, once agreed to by the Parties, will be incorporated into this Agreement as an addendum without the necessity of any further action.

IV. COMPENSATION TO CONSULTANT

- 4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement,

maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period and the record retention period for purposes of audit, inspection, examination, and making excerpts or copies by City and any of its authorized representatives.

- 6.2 Consultant shall retain any and all documents produced as a result of services provided for a period of four years ("retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during the retention period. City may, at its election, require Consultant to return the documents to City prior to or at the conclusion of the retention.
- 6.3 Consultant shall notify City immediately in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions of this Agreement.
- 7.2 Termination Without Cause. This Agreement may be terminated by either Party upon 10 calendar days' written notice provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice provided in accordance with Article VIII. Notice City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.
- 7.4 Defaults With Opportunity for Cure. If Consultant defaults in the performance of this Agreement in a manner stated in this Section 7.4, that shall be considered an event of default. City shall deliver written notice of the default specifying such matter(s) in default. Consultant shall have 15 calendar days after receipt of the written notice in accordance with Article VIII. Notice to cure such default. If Consultant fails to cure the default within such 15-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also

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

If intended for City, to:

City of San Antonio
Attn: Jeff Coyle
Government & Public Affairs Department
506 Dolorosa, Building 2
San Antonio, Texas 78205

If intended for Consultant, to:

The Normandy Group LLC
Attn: Ron Eritano, Partner
1146 19th Street NW, Suite 350
Washington, D.C. 20036

IX. INSURANCE

- 9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Intergovernmental Relations Department, which shall be clearly labeled "**Federal Representation Services**" 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. 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 City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Intergovernmental Relations Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- 9.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement 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, but such changes must be approved by Consultant. In no instance will City allow modification whereby City may incur increased risk.
- 9.3 Consultant's financial integrity is of interest to City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by 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

- 9.6 Consultant agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as 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;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.
- 9.7 Within five 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.
- 9.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Consultant to stop work, and/or withhold any payment(s) which become due to Consultant until Consultant demonstrates compliance with the requirements of this Agreement.
- 9.9 Nothing contained in this Agreement 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.
- 9.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Agreement.
- 9.11 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 City shall be limited to insurance coverage provided.

XI. INTELLECTUAL PROPERTY

- 11.1 Consultant shall pay all royalties and licensing fees related to its work under this Agreement. **Consultant shall hold City HARMLESS and INDEMNIFY City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used under this Agreement. Consultant shall defend City in all suits for infringement of any intellectual property rights under this Agreement.** Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an intellectual property right, Consultant shall promptly give such information to City.
- 11.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately either:
- 11.2.1 Obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- 11.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- 11.2.3 Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.
- 11.3 Consultant further agrees to:
- 11.3.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement; and
- 11.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;
- Provided that:
- 11.3.4 Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of

relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

- 13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of Consultant superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or a joint-venture between City and Consultant. The Parties understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. CONFLICT OF INTEREST

- 14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- (i) a City officer or employee;
 - (ii) his parent, child or spouse;
 - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
 - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.
- 14.2 Consultant warrants and certifies as follows:
- (i) Consultant and its officers, employees and agents are neither officers nor employees of City.
 - (ii) Consultant has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. City relies on Contractor's verification. If found to be false, City may terminate this Agreement for material breach, without providing the opportunity to cure.

- 17.4 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City relies on Consultant's certification. If found to be false, or if Consultant is identified on that list during the course of its contract with City, City may terminate the Contract for material breach.

XVIII. NONWAIVER OF PERFORMANCE

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

XIX. LAW APPLICABLE

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

XXIV. ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to this the _____ day of June, 2019.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
THE NORMANDY GROUP LLC

Carlos J. Contreras, III
Assistant City Manager

Ron Eritano
Partner

Approved as to Form:

City Attorney

CWK
06/20/19
Item No. 28

Exhibit B

**PROFESSIONAL SERVICES AGREEMENT
FOR
FEDERAL REPRESENTATION SERVICES- LOCAL LIAISON**

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 the Law Offices of Serna & Serna, PLLC (“Consultant”), both of which may be referred to individually as a “Party” or collectively as the “Parties”.

The Parties severally and collectively agree, and by the execution are bound, to the mutual obligations contained and to the performance and accomplishment of the tasks described in this Agreement.

I. DEFINITIONS

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

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

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

“Director” shall mean the Director of City’s Government & Public Affairs Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall commence on June 1, 2019 and terminate on December 31, 2020. City has the right to renew for an additional two-year term upon City Council approval.

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

III. SCOPE OF SERVICES

3.1 Consultant shall be responsible for the services and tasks set forth in this Agreement. City reserves the right to engage additional consultants to provide federal legislative services during the terms of this Agreement should the need arise. Baltazar R. Serna, Jr. shall be the lead consultant responsible for the delivery of services through this

- 3.1.7 Provide monthly written reports on actions taken on the City's behalf and execution of strategic plans to the Director, the City Manager, or their designee, for approval. The reports will cover activities undertaken during the prior month to include: 1) time-sensitive updates pertaining to City's priority initiatives; 2) all official contacts with San Antonio elected officials, local government entities, members of Congress, their staffs, members of the executive branch, their staff and other relevant contacts with any other federal agencies, boards and commissions;
- 3.1.8 Attend meetings with City Council and Council Committees as requested by the Director, the City Manager, or their respective designee. At these meetings, Consultant may provide a comprehensive oral report of federal initiatives, strategic plans and their legislative/regulatory status. Consultant will be available to meet with city staff;
- 3.1.9 Participate in at least two Washington D.C. gatherings of City Council members and City staff with key members of Congress, including Bexar County, Texas and national delegation members to advance the City's federal initiatives;
- 3.1.10 Maintain regular contact with local government entities, associations, chambers of commerce, and other City partners as requested by the Director;
- 3.1.11 Perform such other services as directed by the Director, Aviation Director, the City Manager, or their designee, and when requested, provide information to City Council in a timely manner to allow City Council to make informed decisions relative to legislative and regulatory matters that may arise.
- 3.2 City may, at any time and in its sole discretion, assign additional legislative and regulatory matters to Consultant that are not part of the City's federal initiatives.
- 3.3 All work performed by Consultant shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Consultant which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated in this Agreement, even should City elect not to terminate.
- 3.4 Performance measures. A matrix indicating performance measures which will be utilized in evaluating the performance of Consultant on a monthly basis will be incorporated to this agreement as Exhibit I. Performance measures will be developed by the Director and agreed to by the parties within one month of signing of the agreement. Such measures, once agreed to by the Parties, will be incorporated into this Agreement as an addendum without the necessity of any further action.

- 5.3 Consultant acknowledges and agrees that all local government records, as described in this Agreement, produced in the course of the required work will belong to and be the property of City. Consultant shall turn over to City all such records and shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.
- 5.4 Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention.

VI. RECORDS RETENTION

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period and the record retention period for purposes of audit, inspection, examination, and making excerpts or copies by City and any of its authorized representatives.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided for a period of four years ("retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during the retention period. City may, at its election, require Consultant to return the documents to City prior to or at the conclusion of the retention.
- 6.3 Consultant shall notify City immediately in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions of this Agreement.
- 7.2 Termination Without Cause. This Agreement may be terminated by either Party upon 10 calendar days' written notice provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice provided in accordance with Article VIII. Notice City may terminate this Agreement as of the date provided in the notice, in whole

- 7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
Attn: Jeff Coyle
Intergovernmental Relations Department
506 Dolorosa, Building 2
San Antonio, Texas 78205

If intended for Consultant, to:

Law Offices of Serna & Serna, PLLC
Attn: Baltazar R. Serna, Jr.
126 Villita
San Antonio, TX 78205

IX. INSURANCE

- 9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Intergovernmental Relations Department, which shall be clearly labeled "*Federal Representation Services*" 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. 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 City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Intergovernmental Relations Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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.

- 9.5 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 required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided in Article VIII above within 10 calendar days. Consultant shall pay any costs incurred resulting from provision of these documents.
- 9.6 Consultant agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as 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;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.
- 9.7 Within five 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.
- 9.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Consultant to stop work, and/or withhold any payment(s) which become due to Consultant until Consultant demonstrates compliance with the requirements of this Agreement.
- 9.9 Nothing contained in this Agreement shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or

to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

- 11.1 City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department website page and is also available in hard copy format upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner in this Agreement, terms used in this section 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.
- 11.2 City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Consultant acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent the Small Business Office's granting of a waiver, that its full compliance with the following API terms and conditions are necessary to attain satisfactory performance under this Agreement.
- 11.2.1 SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Consultant affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), Consultant agrees not to subcontract more than 49% of the contract value to a non-SBE firm.
- 11.2.2 M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Consultant affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition),

commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. Late Exception Requests will not be considered.

11.7 Consultant acknowledges that the terms of the City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City's SBEDA Policy & Procedure Manual are in furtherance of the City's efforts at economic inclusion and, moreover, that such terms are part of Consultant's scope of work as referenced in the City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are 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 Agreement. Without limitation, Consultant further agrees to the following terms as part of its compliance responsibilities under the SBEDA Program:

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

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

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

11.7.4. Consultant shall notify the SBO, in writing on the Change to Utilization Plan form, through the Director, of any proposed changes to Consultant's Subcontractor/Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or

- 11.8.3. 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;
 - 11.8.4. 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
 - 11.8.5. 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.
- 11.9 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:
- 11.9.1. Suspension of contract
 - 11.9.2. Withholding of funds
 - 11.9.3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance
 - 11.9.4. Refusal to accept a response or proposal
 - 11.9.5. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).
- 11.10 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 the solicitation and Agreement award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, 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 Subcontractors, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. Consultant understands and agrees that a material violation of this clause shall be considered a material breach as set forth in Article VII of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is incorporated into the material terms of this Agreement. Consultant shall

Best Value Contracting – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Consultant’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.

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

Certification – 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 certification services to a regional Certification agency or other entity. For purposes of Certification, the City may accept 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 the Ordinance No. 2016-05-19-0367 Section III.E.6.

City – refers to the City of San Antonio, Texas.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution 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.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary

Good Faith Efforts – documentation of the Consultant’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation 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., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Consultant; and documentation of consultations with trade associations and Consultant’s that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

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 that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, 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 Incentives – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform on behalf of, the City. 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

herein. Unless otherwise stated, the term “MBE” as used in the SBEDA 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 with origins in any of the black racial groups of Africa.

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 – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, 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 the City.

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

Solicitation Incentives – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.

Suspension – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

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

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

XII. INTELLECTUAL PROPERTY

12.1 Consultant shall pay all royalties and licensing fees related to its work under this Agreement. **Consultant shall hold City HARMLESS and INDEMNIFY City from the payment of any royalties, damages, losses or expenses including attorney’s fees**

15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

XIII. ASSIGNMENT AND SUBCONTRACTING

- 13.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.
- 13.2 Any work or services approved for subcontracting shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director or City Council, as required.
- 13.3 Except as otherwise stated in this Agreement, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.
- 13.4 Any attempt to transfer, pledge or otherwise assign this Agreement without the written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIV. INDEPENDENT CONTRACTOR

- 14.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of Consultant superior shall not apply as between City and Consultant, its

never contained in this Agreement; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVII. LICENSES/CERTIFICATIONS

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

XVIII. COMPLIANCE

- 18.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 18.2 Non-Discrimination. As a party to this Agreement, Consultant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
- 18.3 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. City relies on Contractor's verification. If found to be false, City

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

XXIII. CAPTIONS

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

XXIV. INCORPORATION OF EXHIBITS

- 24.1 The exhibits listed below are an essential part of the Agreement, which governs the rights and duties of the Parties, and are incorporated in this Agreement for all purposes.

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