

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
SA TOMORROW SUB-AREA PLANNING CONSULTING SERVICES – PHASES 3 AND 4**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to Ordinance No. 2019-12-05-\_\_\_\_ passed and approved on the 5<sup>th</sup> day of December, 2019 and Moore Iacofano Goltsman, Inc. (MIG) by and through its CEO/Principal, Daniel Iacofano (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

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

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Consultant” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Director” shall mean the director of City’s Planning Department.

**II. TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on January 1, 2020 and terminate on December 31, 2024. The term may be extended upon mutual agreement in writing, between the City and Consultant, in accordance with Article XVI. Amendments.
- 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 additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

### III. SCOPE OF SERVICES

- 3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.
- 3.2 The objective of this scope of work is to develop the Phase 3 and Phase 4 sub-area plans. The Phase 3 plan areas are Stone Oak Area Regional Center, Greater Airport Area Regional Center, Fort Sam Houston Area Regional Center, Rolling Oaks Area Regional Center, South Community Area, and Far East Community Area. The Phase 4 plan areas are Near North Community Area, North Central Community Area, Near Northeast Community Area, Near Northwest Community Area, Southwest Community Area, and West Northwest Community Area.
- 3.3 The scope of work consists of the following major tasks: Project Chartering, Analysis and Visioning, Aerial Photography and Visualization, Plan Framework, Recommendations and Implementation Strategy, Documentation and Adoption, and Ongoing Coordination and Engagement. These tasks will be completed for each phase of sub-area plans.

#### 3.3.1 Project Chartering

The Project Chartering component of the project will focus on finalizing the specific scope, budget, and schedule for the overall phase and the individual plans. Another emphasis will be determining the Planning Team membership for each plan area. Project Chartering will also include an analysis to refine the plan area boundaries, as needed, and corresponding estimates for capture of growth in each Regional Center; determining how total projected growth for the City should be allocated into each Regional Center, and more generally to the future high-capacity transit corridors that may be present in a plan area as delineated in the adopted SA Tomorrow Comprehensive Plan and/or VIA's Vision 2040 Long Range Plan.

#### A. Kick-off Meeting

The Consultant Team will facilitate a meeting between pertinent subconsultants, Planning Department leadership, project managers for each Plan Area, and other involved parties relevant to the plan areas, such as VIA, Office of Equity, Office of Sustainability, Transportation & Capital Improvements Department, Parks & Recreation Department, and San Antonio Metropolitan Health District, to review the project framework, schedule, and overall effort and each individual sub-area plan.

#### B. Equity, Diversity, and Inclusion Workshop

The Consultant Team will organize, facilitate, and document an Equity, Diversity, and Inclusion Workshop, collaborating closely with Planning staff and the Office of Equity, and engaging other departments and neighborhood groups in an open and frank discussion about disparities, unique assets, underrepresented people and populations, and additional process improvements to proactively enhance equity, diversity, and inclusion in the area plans.

The workshop will be scheduled for up to a half-day when the majority of identified stakeholders are available. The Consultant Team will develop a detailed agenda that takes participants through a process of reviewing Phase 1 and Phase 2 process and outcomes through equity, diversity, and inclusion lenses, and identifying opportunities to improve the process and outcomes in Phases 3 and 4.

The Consultant Team will prepare a brief memo summarizing the outcomes of the workshop. Adjustments to scope items and the approach to final deliverables will be discussed with City staff; and, as appropriate, will be implemented if approved by the Director.

#### C. Detailed Scope and Schedule

The Consultant Team will work with City staff to refine the preliminary scope of work and process schedule. Telephone, email, and in-person communications related to this task will likely include:

- Identification of information needs and confirmation of method for data transfer
- Discussion of initial public engagement strategies
- Discussion about future meeting agendas and future meeting dates
- Planning Team meetings coordination and organization
- Identification of roles and responsibilities (City staff, Planning Teams, technical sources, Planning Commission, etc.)
- Preliminary identification of additional stakeholders

#### D. Identification and Confirmation of Planning Team

City staff will identify community representatives, stakeholders, and others to be engaged as Planning Team Members. Each sub-area plan will have its own Planning Team. At the initial Planning Team Kickoff Meeting, the Consultant Team and City staff will meet with each group to discuss each specific area's planning process, expectations, roles, and responsibilities. This also includes a review and discussion regarding the approach to the public participation process. Consultant will lead the group in a brainstorm of initial community priorities including issues and concerns, top concerns the sub-area plan should address, and initial research tasks. It is envisioned that each Planning Team will

help review the text of the plan throughout the planning process. It is understood that City staff will take the lead role organizing the Planning Teams with input and creation of content from the Consultant Team. Consultant will assist City staff by developing expectations and meeting procedures to ensure the Planning Team participants stay informed and engaged throughout the process.

#### E. Determination of Detailed Plan Boundaries and Growth Allocation for Regional Centers and Corridors

During Project Chartering, City staff will meet with key stakeholders to work toward confirming or appropriately amending the boundaries of each sub-area, as necessary. Following confirmation of those boundaries, the Consultant Team will revisit the assumptions and projections from the Comprehensive Plan and generate a revised, agreed upon working goal for growth capture in the Regional Center plan areas. Consultant will augment existing Alamo Area Metropolitan Planning Organization (AAMPO) traffic analysis zone (TAZ) forecasts. The adjustments will result in estimated potential growth capture for each Regional Center, and along key transportation corridors, as applicable, in this study. These estimates will help guide the land use planning efforts.

### 3.3.2 Analysis and Visioning

The Analysis and Visioning component of the project will focus on assessing the existing conditions and capacity of each plan area. The Planning Teams and community will provide direction on visioning and goal setting for each plan area. The analysis and refinement of existing conditions will help to ensure that visioning and goal setting is grounded in the proper context.

#### A. Preliminary Identification of “Focus Topics”

The Consultant Team will work with City staff to develop cross-cutting frameworks with the potential to help address citywide issues and better integrate Regional Centers and Community Areas with either geographic or thematic connections. The Consultant Team will utilize the Emerging Themes from the Phase 1 and 2 plans as a starting point and may develop one or two additional thematic connections, as needed. The Consultant Team will use these thematic connections to work with City staff in determining up to four “Focus Topics” for each plan area.

The Consultant Team will provide a summary memo of approximately 4 to 6 pages detailing the agreed upon “Focus Topics” and evaluating their value and support. City staff will be responsible for vetting the thematic connections with key stakeholders and determining whether one or more of the higher order

themes will move forward as an organizing framework throughout the remainder of the planning process.

## B. Existing Conditions Mapping and Analysis

The Consultant Team will develop existing conditions maps and associated analysis for each of the plan areas and compile this information, along with narrative content developed by City staff, into the Existing Conditions Atlas template developed for the Phase 1 and Phase 2 plans. The Existing Conditions Atlas is a highly graphic format using charts, graphs and other graphic elements. Maps for the Existing Conditions Atlas will be created by the Consultant Team using City-provided GIS data, after preliminary discussions with and additional input from City staff. The Consultant Team will perform two sets of revisions to the existing conditions maps following receipt of a consolidated set of comments from City staff. Inadequate base information or unconsolidated comments provided by the City may result in additional services.

B.1. Demographic and Economic Profile – The Consultant Team will develop a succinct demographic and economic profile to serve as a foundation for the existing conditions assessment of each plan area, working from the SA Tomorrow existing conditions report, and incorporating available updated data. The profile will also include a high-level identification of existing barriers to development.

B.2. Existing Land Use – For each of the plan areas, the Consultant Team will create a map to indicate uses, as currently designated by the City. The maps will be built using GIS files received from the City, according to the boundaries defined for each planning area. The Consultant Team will then provide a general summary of uses in each plan area, focusing on community identity, capacity for absorption of growth, and relationships between neighboring uses (conflicting or complementary). The Consultant Team will produce six maps and approximately six pages of summary content. The draft report will be provided in MS Word, and the maps as both shapefiles and JPEG or PNG images.

B.3. Review of Previously-Adopted Land Use Plans – The Consultant Team will review a summary of previously adopted land use plans prepared by City staff. City staff will work with the Consultant Team to create an existing land use map based on the methodology developed for the Phase 1 and Phase 2 plans. The subsequent summary will include a map of the currently adopted land use plans, discussion of areas where multiple plans apply (e.g. sector plan overlap). The summary may include a brief section related to city-initiated plan updates and some discussion of the failure to implement certain plan components.

B.4. Existing Opportunity Areas – For each of the plan areas, the Consultant Team will create a map to highlight underutilized parcels, vacant parcels, and publicly-owned parcels, as currently designated by the City. The maps will be built using GIS files received from the City, according to the boundaries defined for each plan area. The maps will be provided as both shapefiles and JPEG or PNG images. This mapping will be used to identify potential Focus Areas, Transformative Projects, and Mixed-Use Corridors in the Plan Framework.

B.5. Existing Transportation Networks – The Consultant Team will organize existing GIS data and provide plan area maps that provide information on the existing transportation networks. Data assembly will include data currently in the Consultant Team’s possession, supplemented with updated GIS data available on the City of San Antonio’s website, and other GIS data that might be provided by the City. The Consultant Team will also assemble data from VIA Metropolitan Transit, Alamo Area Metropolitan Planning Organization (AAMPO), and TxDOT. If necessary, the Consultant Team could access Open Street Map to acquire additional data that is crowdsourced, for example, as this source often has pedestrian and bicycle data beyond that officially collected by jurisdictions. Data expected to be assembled includes, but is not limited to:

- City – Data on most transportation facilities including street center lines, sidewalk data, trails and greenways, and limited bicycle facility data.
- TxDOT – State road center lines.
- VIA – Transit routing. The Consultant Team expects to access the updated projected Comprehensive Operations Analysis (COA) data, once approved by the VIA Board.

The Consultant Team will deliver a map package and a summary profile memo – one map of each plan area identifying the complete multimodal transportation network in the plan area (based on available data); one map for each plan area that shows only bicycle and pedestrian networks; one map for each plan area that shows the roadway and transit network; one memo summarizing the key takeaways and data points from the network analysis provided in the mapping.

B.6. Existing Infrastructure and Amenities and Access to Public Spaces – The Consultant Team will work with City staff, the Planning Team, and partner agencies to gather data to understand the existing capacity of major utility infrastructure and access to public amenities including parks, plazas, trails, community facilities, libraries, and pools. The result will be a map that illustrates these existing amenities to be used for identifying potential

improvements that address existing capacity and access issues in the Plan Framework.

The Consultant Team will work with the Planning Team to identify major issues and gaps in the provision of utilities that might support future redevelopment and/or intensification of existing uses.

The Consultant Team will also coordinate with the teams working on Community Health and Parks & Recreation planning and analysis to identify gaps in access to parks, open space, and up to two additional community amenities as identified and prioritized by the Planning Teams. The choice of community amenities that are mapped may be limited based on the availability of spatial data.

B.7. Access Analysis - Leveraging the outcomes of the Equity, Diversity and Inclusion Workshop, the Consultant Team will complete a more detailed analysis of access using network analyst and assumptions around predominant mode of transportation, reasonable travel times/distances and major barriers. The additional layering of access onto the existing and planned systems analysis will highlight disparities within plan areas and within neighborhoods. This will help Planning Team members, staff, and the Consultants to more quickly identify gaps and target those areas when developing recommendations in the Plan Framework task and subtasks.

#### C. Kick-Off Sub-Area Tours

To provide a more common understanding and foundation for the planning effort, the Consultant Team will organize van or bus tours of the plan areas. The Consultant Team will work with local subconsultants and staff to arrange transportation and develop a tour route that accomplishes two major objectives. The first objective will be to familiarize the Planning Team members and other participants with the diverse geographies, assets, and challenges within each plan area. The second objective will be to familiarize Planning Team members with examples of predominant land uses within the planning area or nearby.

#### D. Resource-Based Analysis

Each plan area will be analyzed to identify its key resources and strengths. The Consultant Team and City staff will facilitate this analysis in a series of exercises to be conducted first by the Planning Team and then at the following Community Meeting. City staff may conduct similar exercises at other community engagement events and provide summaries of those exercises to the Consultant Team for inclusion in the summarized analysis. This analysis will help in

determining the greatest strengths and resources existing in the plan areas to ensure that the plan builds upon them in meaningful ways.

#### E. Visioning and Goal Setting

The Consultant Team will evaluate inputs from residents, business owners, and employees, as well as stakeholders and agencies active in each plan area, to construct a vision statement and planning goals. Exercises will be conducted with the Planning Team and at a following Community Meeting to help establish and confirm the Vision and Goals for each plan area. The vision statement is intended to capture in a few sentences the overall purpose of each plan and the identity of each plan area. The visions will be aligned with the overall vision for the City articulated in the SA Tomorrow Comprehensive Plan. A series of goals will guide the creation of the Plan Framework, and will address identified plan components, such as housing, economic development, mobility, and public amenities, etc. The visioning and goal setting summary memo will also include an element of branding whereby the Consultant Team will use Planning Team and community input to describe the future character and identity of the plan area. If appropriate to the plan, the Consultant Team may also suggest a center or district name for use in the final plan document.

### 3.3.3 Aerial Photography and Visualization

#### A. Drone Photography

Consultant staff will travel to San Antonio and collect the aerial photography of each of the plan areas from several different vantage points and elevations. The Consultant will collect enough imagery to thoroughly illustrate the specific opportunities, constraints, solutions, and improvements that are anticipated as a part of the planning efforts. This site visit will occur early in the planning process in order to provide base imagery that can be used in the existing conditions analysis and communications. The photography will concentrate on key focus areas, or areas that are likely to experience the most change, within each of the plan areas. All site photography gathered on site will be made available to City staff for future use.

#### B. 3D Massing on Aerial Photography

The Consultant Team will combine high-level 3D graphics with aerial drone photography to create a 3D base massing model for applicable Focus Areas and Catalytic Project sites. This will be used to convey a realistic and more complete picture of how new development and potential land use changes could fit into and affect the existing San Antonio landscape. The Consultant Team will provide images for up to three Catalytic Project sites in each plan area, including 3D



massing onto aerial photographs, showing both the original photo and visualization composites.

### C. 3D Model Improvements

Consultants will coordinate both internally and with City staff to align the goals of this visualization effort with those of the area planning (e.g. modeling conventions, level of detail, material selection). Each area's story will be illustrated to have its own parameters, likely necessitating some modifications to the 3D model to hone the specific messages to be conveyed and to unify the graphic style.

### D. Camera Matching

The process of matching a virtual camera to a real-world camera is one primarily of gathering common points of reference between the virtual and real world. The Consultants will begin by improving the existing 3D models generated as a part of the SA Tomorrow Sub-Area Planning process to include the necessary context to help align the virtual 3D model to the site photography. This will involve merging Google Earth, City, and possible USGS GIS data to create an accurate base model that the elements of the area plan can sit atop. After the Consultants and City staff identify the specific photos to use as "backdrops" to the virtual model, Consultant staff will place virtual cameras within the 3D models and carefully align them to their respective real-world counterparts.

### 3.3.4 Plan Framework

The Plan Framework component of the project will focus on working with the community, Planning Teams, and key stakeholders to establish the Plan Framework, which will include recommendations for each plan area related to Land Use, Mobility and Access, Amenities and Public Spaces, Focus Areas and Transformative Projects, Economic Development, and Housing.

#### A. Land Use Plan and Map Development

The Consultant Team will develop a set of maps for each plan area reflecting desired land uses. The maps will incorporate key findings and recommendations from existing neighborhood plans, the SA Tomorrow plans, and SA Corridors.

A.1. Future Land Use Planning Team Meeting and Analysis of Neighborhood Level Land Use – This subtask includes the Consultant Team leading a set of two Planning Team meetings for each plan area. The Planning Team meetings will include a series of interactive exercises that provide an introduction to land use concepts and the City of San Antonio's adopted

Comprehensive Land Use categories, along with discussion about the more technical challenges related to land and building uses that have had a negative impact on neighborhood stability, in terms of quality of life and of economic performance; and interactive land use mapping exercises that will inform and help refine the final land use recommendations and map.

For this task, the team will identify key land use-related challenges that are observed in each neighborhood. A larger set of issues will be defined more globally and then those relevant to each neighborhood will be identified in a matrix format. The deliverable for this task will consist of a report, generated in MS Word, of 4-6 pages in length for each plan area highlighting individual neighborhoods and specific areas of concern. The report will include a summary table of challenges as an appendix, and will be illustrated by photos.

Key aspects of the Land Use approach include:

- Interactive land use activities to introduce the land use categories to the planning teams
- A customized cipher to translate all previously developed land use maps into the language of the newly adopted land use categories, so that all plan areas are treated equally, and so that maps are generated the same way in all project phases.
- A defined and uniform process for direct collaboration between consultant team and staff which has already been tested and proven effective for project management and for quality control.

A.2. Identification of Potential Zoning Changes – To encourage desirable and manageable development patterns, the Consultant Team will recommend zoning changes for each of the plan areas. The Consultant Team will provide maps highlighting areas where existing zoning is not consistent with the proposed Future Land Use Plan. The maps will indicate where changes of zoning for particular properties would promote the vision, goals, and objectives of the sub-area plan. The 4-6 page written summary will address larger code-related changes that would facilitate the vision and goals for each area, such as modifications to standards, to the categories themselves, or procedural changes (such as incentives and application requirements) that would encourage desirable development activity. The summary will be compiled in MS Word and the maps will be provided in both shapefile and JPEG format.

## B. Mobility and Access Improvement Plan

B.1. Establish Layered Network Priorities Map – The Consultant Team will research and utilize input from the City, public, and key stakeholders to

develop a Layered Network Priority Map. The map will be developed in either Adobe Illustrator or ArcGIS and will identify priority needs in the study area related to mobility and access for all modes.

B.2. Recommend Mobility Enhancements that are aligned with the VIA Vision 2040 Plan, SA Tomorrow Multimodal Transportation Plan, and SA Corridors –  
In response to the priorities documented in the ‘Layered Network Priorities Map’, the Consultant Team will identify improvements and new connections that address these needs, to enhance mobility and access within the study area. The recommendations could include features such as the identification of bicycle and pedestrian improvements, freight service/parking areas, new connections, or intersection improvements. The Consultant Team will produce a technical memorandum listing the recommended improvements applicable to the study area. This and information from the following task will inform recommended streetscape and major thoroughfare cross-sections.

#### C. Amenities and Public Spaces Improvement Plan

The Consultant Team will use the Issues and Gap Analysis to develop a recommended Amenities and Public Spaces Improvement Plan for each Plan Area. The selected recommendations will be derived from aligning potential improvements with the preferred land use mapping from above. The suggested improvements will also build on recommendations in the SA Tomorrow Multimodal Transportation and Sustainability Plans, SA Corridors, Infrastructure Plans, VIA’s Vision 2040, City of San Antonio Parks & Recreation System Strategic Plan, etc. The Consultant Team will also coordinate with project partners in infrastructure improvement identification, design, and implementation. A summary memo for each plan area will include an improvements map and sections summarizing the following: Planned and Needed Infrastructure Improvements, and Recommended Assets and Amenities for “Complete” neighborhoods and communities.

As a part of the Amenities and Public Spaces Improvement Plan, the Consultant Team will coordinate with the City of San Antonio Parks & Recreation Department’s System Strategic Plan effort to assure alignment regarding suggested parks, public spaces, trails, and recreational facilities within each plan area. The Consultant Team will then provide another level of detail for each recommended facility by identifying a list of more specific programmatic elements and precedent imagery representing the community’s vision for each.

#### D. Identification of Focus Areas and Transformative Projects

The Consultant Team will identify a set of focus areas and potentially transformative projects for public and/or private improvements.

D.1. Focus Area Identification – The Consultant Team will work with the Planning Team and the community to identify potential Focus Areas and/or Corridors that will likely consist of vacant or underutilized properties within the plan area. The Consultant Team will create a map that identifies all potential Focus Areas and/or Corridors along with a narrative of key characteristics that are identified through activities with the Planning Team and at Community Meetings such as desired character, desired mix of uses, desired building heights, etc.

D.2. Transformative Project Identification and Concepts – For up to three transformative projects in each plan area, the Consultant Team will develop a conceptual site plan and/or design, development program, and precedent photos of how that site could be developed to catalyze the vision for the Regional Center or Community Area. The Consultant Team will produce a plan view illustrative site plan, a development program, a pro forma with gap analysis, and precedent images for each of the catalytic development sites. The Consultant Team will lead a Digital Design Charrette for each plan area to further develop applicable Transformative Project Concepts with City staff and key stakeholders. This Digital Design Charrette will be conducted in-person with Consultant Team project managers joining by tele/web conference.

D.2.a. Digital Design Charrette. Digital Design Charrettes are anticipated for each planning area. For each of these charrettes, the Consultant will provide a principal facilitator and an urban design staff that can operate the digital design (sketch-up based) in real time. The Digital Design Charrette utilizes proven conceptual design methods to explore design and planning scenarios with a set of digital tools that allow for not only rapid idea consideration but also detailed numeric and three-dimensional analysis. The charrettes will focus on land use, massing, and the identification of one to three catalytic sites/projects identified by the Planning Team and City staff. The outputs will be used in developing the specific recommendations for land use, built form, and placemaking in each planning areas.

D.3. Creative Community Programming, Placemaking Analysis, and Strategy – The Consultant Team will work with project partners and the Planning Team to identify specific actions related to programmatic elements, events, and activation of existing and future public spaces, when applicable in certain plan areas. Community programming refers to programs (e.g., Neighborhood Watch and Safe Routes 2 School) and events (e.g., cultural festivals, farmers

markets, and neighborhood clean-ups). Recommendations with a physical location or spatial component will be mapped as a part of the Focus Areas or Transformative Projects for applicable plan areas. The Consultant Team will also prepare up to two conceptual site plans for public space and placemaking improvements in Focus Areas or Transformative Projects for applicable plan areas. The Consultant Team will produce a plan view illustrative site plan, and a sketch level vignette or precedent imagery for each recommended public space.

D.4. Photo Simulations and Final Graphics – The Consultant Team will develop high-quality photo simulations for one transformative project or focus area within each of the plan areas to better communicate the potential change and community benefit of high-priority development and design interventions. These images will consist of ground level simulations or aerial massing rendered over site photography of existing conditions in each of the plan areas.

D.4.a. Base Photo Selection and Conceptual Sketches. The Consultant Team will work with City staff and the Planning Teams to select up to one priority site for each plan area. This will likely be a transformative project within the sub-area. The Project Team will select a base photograph of the priority area. Consultant staff will create initial sketches indicating direction and key concepts for each of the photo simulations.

D.4.b. Screen Check of First Draft Photo Simulations. The Consultant Team will develop an initial draft of each photo simulation and conduct a web review session with the Project Team to discuss potential edits. A punch list of agreed upon changes will be developed to summarize input from the call.

D.4.c. Revised Photo Simulations. The Consultant will revise the photo simulations based upon the punch list developed during the previous task.

D.4.d. Image Compositing and Final Touches. After site photos are selected, the 3D models and photo simulations are refined, and the virtual cameras matched, Consultant staff will begin the process of compositing the computer-generated content with the drone photos. Within this task, the Consultant will refine the overall graphic style to highlight the particular concepts and/or alternative ideas that the Project Team will impart to the public.

D.4.e. Final Revisions. The Consultant Team will make the necessary changes and finalize the images after receiving comments from the Project Team.

#### E. Economic Development Strategy

For each plan area, an economic development strategy will be created. The strategy will be devised by working closely with stakeholders and by aligning each plan area's strategy with city-wide and outside economic development efforts. A SWOT analysis, or similar analysis tool, will be completed for each plan area to understand its competitive position and serve as the basis for the strategy. For Regional Center plan areas, the SWOT analysis will include the findings from an Innovation Audit, which will identify the components of each center that can help foster innovation. The results of the analysis will be an economic development implementation action plan that will identify target industries, actions to align efforts related to business retention and attraction, investments needed in the built environment, and conceptual branding/market identity ideas.

#### F. Housing Strategy

The Consultant Team will develop a housing strategy for each plan area. Consultant staff will lead a dedicated Planning Team meeting for each plan to discuss this topic in detail. The resulting strategy will spell out the goals and objectives for housing in each center, including housing targets. The analysis will identify barriers to housing development and develop strategies to address those barriers. Lastly, a livability analysis will be developed to identify changes needed in each plan area to increase the attractiveness of living in the areas. The outcome will be action steps to address housing issues.

### 3.3.5 Recommendations and Implementation Strategy

The Recommendations and Implementation Strategy will be used to develop specific projects, programs, and policies to affect change in each of the plan areas, including the development of specific action-oriented implementation strategies. Finally, it will include recommendations for updates to the Unified Development Code (Chapter 35 of the City Code).

#### A. Priority Investments and Phasing

The Consultant Team will develop prioritization and phasing for the recommendations within each plan area.

A.1. Prioritization of Needed Improvements – The Consultant Team will work with the Planning Team, City staff, and partners to prioritize and sequence the recommended public improvements, programmatic elements, and regulatory changes. The result will be a matrix of prioritized recommendations.

A.2. Recommended Streetscape and Major Thoroughfare Cross-Sections – Taking into account the feedback from the public, key stakeholders, and City staff, the Consultant Team will present planning-level preferred street cross sections to the community that demonstrate how existing right-of-way (ROW) should be allocated to serve all modes of transportation and improve mobility, access, and sense of place. For the purpose of this exercise, the Consultant Team proposes using a tool such as StreetMix to present cross-sections to produce two planning level Streetscape and Major Thoroughfare Cross-Sections per plan area, presenting two options for each of the selected locations (total of 4 cross-sections per plan area).

A.3. Phasing Strategy – Phasing will be developed for the 10-year planning horizon with a short-term of 1 to 2 years, a mid-term of 3 to 5 years and a long-term of 6 to 10 years. Needed investments and improvements will be prioritized to develop a priority improvement list. The priority improvements will be organized by timing (short, medium and long term) to guide City actions and investments. The goal is to develop a list of achievable improvements that can be made through the City's CIP, bond program, public financing mechanism, and public-private partnerships.

## B. Implementation Action Plan

The Consultant Team will develop an implementation action plan delineating major actions related to the top priority recommendations.

B.1. Zoning and Policy Recommendations – The zoning and policy recommendations that the team will generate will build upon the possible zoning changes developed in the Plan Framework. The recommendations will be organized into two matrices: one for recommended zoning changes and one for recommended policy changes. The matrices will be embedded in a report, with supporting text discussing the context of the tables. The table will be color coded to indicate prioritization of the recommended action. The report will be approximately ten pages in length, and the matrices will be provided as standalone files, in excel and PDF formats, as well as embedded components of the report.

B.2. Inclusive and Equitable Recommendations – The Consultant Team will work with City staff and gain Planning Team input to develop a set of

recommendations aimed at promoting and achieving citywide inclusivity and equity goals. These recommendations will be developed for each plan area but will also provide complementary guidance across all plans in each planning phase to guide equitable and inclusive growth strategies.

B.3. High-Level Economic Impact of Implementing Land Use Plan and Zoning Changes – The Consultant Team will prepare a high planning level analysis of the potential impact of suggested land use and zoning changes. The analysis will look at the aggregate change by plan area and estimate the potential increase or decrease in potential value based upon changes in use and entitlements. The Consultant Team will also use these estimates to calculate a rough magnitude of order change in revenues for the City assuming full build out.

B.4. Neighborhood Profile and Priorities – The Neighborhood Profile and Priorities section of the sub-area plans is intended to provide special attention to prior neighborhood planning efforts and recognizes the community groups and individuals who were instrumental in their creation. Each sub-area plan will integrate key elements of existing Neighborhood Plans for those neighborhoods that have a plan, while promoting citywide policy consistency and providing key recommendations and strategies for those neighborhoods currently lacking that direction. Each Neighborhood Profile and Priorities document will be 2-5 pages per geography, focus on the short- to mid-term actions, and include the following:

- Unique features of the geography;
- Issues and priorities specific to the geography; and
- Potential action steps.

The Consultant Team will provide a template for City staff to engage the individual neighborhoods with in developing their Neighborhood Profile and Priorities. City staff will provide the Consultant Team with the completed documents for inclusion in the e-Plan.

B.5. Supplementary Concept Diagrams and Enhanced Illustrations - For each of the sub-areas, the Consultant Team will work with City staff to identify a set of supplementary Concept Diagrams and Enhanced Illustrations to better demonstrate select recommendations in the plan. Each sub-area may have different needs for these supplementary graphics, and the Consultant Team will work with City staff to identify the best candidates based upon community feedback gathered during the review period for the Public Draft and the Administrative Draft Plan. Each sub-area will have no fewer than three, but no greater than six additional Concept Diagrams and/or Enhanced Illustrations.



### 3.3.6 Documentation and Adoption

Documentation and Adoption will largely be devoted to finalizing the e-Plan, creating the Executive Summaries, and meeting with appropriate groups to develop additional next steps that will be critical to supporting implementation. These may include organizational changes, key hires, new funding streams, and suggested legislation.

#### A. Public and Administrative Drafts

The Consultant Team will compose a Public Draft Plan including draft plan content, charts, maps, figures, etc. The Public Draft Plan will be in a Microsoft Word-based text format with associated key graphics as an attached companion. The narrative will make references to clearly identified graphics that will be attached after the conclusion of the narrative. The text and graphics will be provided in a single PDF document for broader distribution and review.

After a period of public review and comment, the Consultant Team will work with City staff to draft revisions to the Public Draft Plan, creating an Administrative Draft Plan that will be used throughout the formal adoption process. The Administrative Draft Plan will be created and distributed in the same formats as the Public Draft Plan.

#### B. Project Websites and e-Plans

The Consultant Team will develop e-Plans that will increase ease of use for both internal (content creators) and external (site visitors) users, while simultaneously eliminating problematic and unsafe architecture, while employing contemporary website/e-Plan design to fit visitor expectations. The landing page for the existing SA Tomorrow website will be modified to include links to the individual project websites/e-Plans. The SA Tomorrow Comprehensive Plan's e-Plan will also include multiple links and interactive maps that will lead interested users to the websites/e-Plans for the subject plan areas.

All e-Plans will conform to the following scope to enable the City to roll out sub-area plans as appropriate with confidence that each will conform to scope and style. The Consultant Team will follow a schedule of rapid iteration and check-ins designed to make the design and development process as transparent as possible. The Consultant Team will work through a series of design iterations and prototypes until we have met the needs highlighted by our user stories. Upon completion of initial development, as well as during the process, City staff will have several touch points with which to test the usability and functionality of the product. If usability concerns are discovered that were not fleshed out in the design phase, we can revisit those within the agreed scope of the project and determine the most satisfactory outcome.

Acceptance will be measured from the first wireframe to the final product. Key elements will include the following:

- Website Hosting and Server Configuration (JAMB stack) on the BowTie/AWS cloud.
- Customized Website/e-Plan Design – including both information and visual design, and any graphics support requested/required.
- Website development, implementation, and publication.
- Information design – Consultant will assist in simplifying/organizing content and site structure to fit the e-Plan framework, and to improve visitor experience when accessing the e-Plans including views, information search, and quick navigation links.
- Site will be editable by multiple people without HTML knowledge, and include a comprehensive training document.
- Navigable menu bar for content, with crosscutting themes throughout the plan, interactive maps, and other pertinent sections.
- Have a clear area for updates to facilitate the use of the site as a project update tool to the community.
- Direct linking to all related e-Plans, including SA Tomorrow, for easy cross navigation.
- Interactive maps and graphics designed to enrich select data and plan elements.
- Main page with navigation across main sections, crosscutting themes, and containing information on the plan itself for context to users.
- Topical background and vision section for context of the e-Plan.
- Search functionality across full e-Plan.
- Inclusion of all plan sections for mirrored content between print plan and e-Plan.
- Document repository for full plan pdf(s) as well all subsections, and supporting materials found in of plan.
- Terms of Service and sitemap pages.
- Acknowledgements section for team members, supporters, stakeholders, and others.
- Automatic source version control and data backups to ensure information fidelity.

It should be noted that the City review timelines will be designed to allow meaningful touch points at all milestones for input, direction, and critique so as to ensure all desired outcomes on delivery. Additionally, in the case of multiple e-Plans (such as sub-area plans) we stack the timeline to gain operational and speed efficiencies thereby reducing overall time requirements.

In addition to the sub-area e-plans, each website will include printable PDF-versions of the final Microsoft Word-based adopted plan document, in both English and Spanish.

### C. Executive Summary Documents

The Consultant Team will develop a 15 to 20-page executive summary for each of the sub-area plans that will provide a high-level summary of the plan, and will be developed for easy reproduction and distribution to community members and potential partners. The Consultant Team will graphically design the executive summary and provide print ready files to the City. The Consultant Team will provide a version of each Executive Summary in Spanish. The City will be responsible for producing copies of the summary documents.

### D. Next Steps Strategy Meetings

The Consultant Team will work with the City and key partners to develop next steps and implementation strategy meetings for each of the sub-area plan. A schedule for key milestones and action completion dates will be proposed as a guide to the City's implementation efforts. Funding tools and strategies will be identified for the major infrastructure improvements recommended in the area plans, as well as, any necessary organizational changes, new staffing requirements, and policies or legislation that are needed will be recommended to ensure the vision created in the sub-area plans is sustainable.

## 3.3.7 Ongoing Coordination and Engagement

The Ongoing Coordination and Engagement component of the scope of services is ongoing from project initiation through plan adoption for each sub-area geography. This includes an updated community engagement strategy, implementation, coordination with concurrent planning efforts and partner agencies, and project management and coordination.

### A. Community Engagement Strategies

A.1. Identifying Key Stakeholders, Level of Engagement, and Recommended Tools – The Consultant Team will work with City staff to identify and target individuals, community groups (e.g., neighborhoods, community organizations), traditional and social media groups, elected and appointed officials, representatives from educational institutions (from pre-K to university), businesses and non-profits (owners, managers, employees, customers, clients), and others (e.g., environmental, professional, and trade groups.) to allow for a broad range of stakeholders and community members to get involved at the level that is most appropriate for them in each sub-area plan.

A.2. Final Community Engagement Strategy for Each Geography and Preliminary Schedule – For each plan area, the Consultant Team will craft a community engagement strategy that includes: the articulation of specific goals and objectives, a call to action, strategies and tactics, and evaluation.

A.3. Public Participation Throughout Plan Development and Public Draft Review – The Consultant Team will work with City staff to develop a public participation strategy for meetings and events in each of the plan areas to include area-specific process, agenda, and messaging, based on audiences and objectives.

## B. Community Engagement Implementation

The Consultant Team will assist in implementing the tools that were successfully used in prior SA Tomorrow Sub-Area Plan community engagement efforts, and will add new community engagement tools that will enhance the program, such as creating messaging and marketing materials and collateral (e.g., sub-area specific fact sheets, FAQs, and messaging/talking points for volunteer leaders within each plan); identifying possible planning partners that could help leverage sub-area plan activities and outreach efforts (e.g., other transportation and infrastructure plans occurring concurrently in San Antonio); and creating new outreach channels as warranted with schools (e.g., sending meeting invitations home with kids), churches (e.g., preparing announcements for church bulletins about upcoming meetings and surveys), large employers (e.g., create break-room posters with QR codes for survey participation), and health clubs and coffee shops (e.g., prepare handouts for front desk distribution listing key points and feedback opportunities).

B.1. Stakeholder Focus Groups – The Consultant Team will conduct a series of focus groups throughout the planning process as a means of engaging key stakeholders, organizations, and interest groups as the need and opportunity presents itself. Consultant will begin outreach to the focus groups in the first month of each area plan process and then follow up with these and other stakeholders as deemed appropriate and necessary throughout the remainder of the effort. The Consultant Team will conduct a number of focus groups commensurate with the budget allocated to the task. It is assumed that this task will include approximately six to eight focus groups throughout the process for each area plan. A key outcome will be to understand what each group sees as a successful plan process and outcome.

B.2. Planning Team Meetings – The Consultant Team will facilitate, prepare meeting materials, and generate presentation content for up to 13 Planning Team meeting windows per sub-area, depending on the complexity of each plan. The Consultant Team will work with City staff to align meeting windows

among the plan areas as often as possible. Topics covered during Planning Team meetings will include: Existing Conditions; Opportunities and Challenges, and Vision and Goals; Focus Areas and Mixed-Use Corridors; Land Use; Housing and Economic Development; Mobility; Amenities and Public Spaces; Catalytic Sites and Neighborhood Profiles and Priorities; Draft Plan Framework and Recommendations; and Comments Received and Potential Revisions to the Public Draft.

B.3. Community Meetings and Open Houses – Four Community Meetings will be hosted for each plan area, which will include a combination of interactive workshops and an open house. The Consultant Team will collaborate with City staff on meeting design, and will develop meeting materials. City staff will plan, facilitate, and summarize the meetings.

- Community Meeting #1 – will provide an opportunity to meet with area residents, previous planning teams, and neighborhood association/coalition representatives to provide an overview of the planning process, schedule, and options for continued participation in the process.
- Community Meeting #2 - will present the Existing Conditions information, identification of Opportunities and Challenges, and review and input on the draft Vision and Goals for the plan area.
- Community Meeting #3 – will present Draft Recommendations and mapping for Focus Areas and Mixed-Use Corridors, Land Use, Housing, Economic Development, and identification of Mobility Challenges within the plan area.
- Community Meeting #4 – will present key components of the Public Draft of the plan with an Open House-style format including stations where attendees can take a deeper dive into, and provide feedback for, each aspect of the Plan Framework that may be of interest to them.

B.4. Intercept / Pop-Up Event Materials – City staff will organize and facilitate interactive community events that “intercept” people as they go about their daily lives. The Consultant Team will create a graphic poster for each plan area and one overview poster for the entire SA Tomorrow Sub-Area Planning effort. The intention is to engage and educate residents, employers, and visitors and provide a forum for a more localized look at issues and opportunities.

B.5. Digital Design Charrettes - The Digital Design Charrette will explore design and planning scenarios with a set of digital tools that allow for rapid idea consideration as well as detailed numeric and three-dimensional analysis.

Digital design charrettes are anticipated for each plan area. The Consultant Team will provide a principal facilitator and two urban design staff that can operate the digital design (sketch-up based) in real time. The charrettes will focus on land use, massing, and the identification of one or more locations for public spaces. The outputs will be used in developing the specific recommendations for land use, built form and placemaking in each planning areas.

As the ideas discussed around the table take shape, a facilitator illustrates them on the computer which is projected to a large display allowing, not just a table but, a whole room to participate. The digital nature of this process allows the concept to be vetted against any number of base mapping layers at any scale; concepts to be copied/saved/modified quickly; numeric analysis such as length and area calculations at the click of a button; and most importantly, concepts developed in a "Digital Design Charrette" are not limited to two-dimensions.

B.6. Messaging and Marketing Collateral - Create plan area-specific messaging and content and leverage it across multiple platforms including news releases, website, social media, e-blasts, invitations, blogs, and affiliated organizations' newsletters. Consultant will create and maintain the project website, and will provide training to City staff to maintain with regular updates. In addition, members of the Consultant Team can provide up to five additional ready to deploy communications for each plan area. These may include any combination of the above list.

B.7. Social Media Outreach - The Consultant Team will coordinate with the City staff on joint marketing and communications strategies to develop media, key themes, and messages to support the overall strategy for social media for each of the area plans. The Consultant Team will provide recommendations on messaging and scheduling. City staff will be responsible for implementing social media outreach.

B.8. Outreach Toolkit and Staff Training - The Consultant Team will design and develop two Outreach Toolkits to be used by City staff to meet with a variety of community groups, associations and individual citizens to collect community input in a variety of settings, such as regular meetings of community organizations or at a gathering of interested neighbors. Each toolkit will include a discussion guide and PowerPoint presentation for a 10-

minute presentation as appropriate. The Consultant Team will develop a toolkit that corresponds with two key periods of plan development. Toolkit 1 will be developed for the beginning of the projects to generate interest in the planning process. Toolkit 2 will be developed midway through the project in order to get feedback as the draft Plan develops. It will generally correspond with the timing of Community Meeting #3. The Consultant Team will conduct one training session for City staff on how to use the Outreach Toolkits. This training may be either in-person (if it occurs during a meeting window) or through a tele/web conference. City staff will be responsible for summarizing the results of these efforts for the Consultant Team.

B.9. Online Companions to Community Meetings - The Consultant Team will create robust online equivalents of the exercise developed and deployed at the Community Meetings. The online exercises will be linked to the project websites with notifications to those on email lists and a feature on the homepage of the website announcing the opportunity. The Consultant Team will collect and summarize the inputs from the online equivalent exercises.

#### C. Community Engagement Reports

City staff will take the lead on summarizing key themes, comments, input, and feedback from each of the community outreach meetings and events. The Consultant Team will provide a summary document template in MS Word for staff to use, and can provide one round of review and edits for each meeting summary.

#### D. Coordination with Concurrent Planning Efforts

The Consultant Team will coordinate sub-area planning efforts with concurrent plans and studies.

#### E. Coordination with Partner Agencies

It will be critical to a successful planning process to participate in ongoing coordination and information sharing with the partner agencies involved in the sub-area planning effort. The Consultant Team will coordinate planning efforts with partner agencies including, but not limited to, Alamo Area Council of Governments (AACOG), Bexar County Health Collaborative, San Antonio River Authority (SARA), San Antonio Water System (SAWS), and VIA Metropolitan Transit (VIA). Coordination will likely include meetings, phone calls, data transfers, coordinated materials, meeting coordination, and consistent appearance and physicality of project deliverables and outreach materials.

#### F. Ongoing Project Management and Coordination

The Consultant will manage all subconsultants assembled for this project. This will include providing direction to subconsultants and quality assurance/quality control (QA/QC) of draft and final work products. It will also include processing subconsultant invoices and preparing monthly invoices for the City. This task will also include ongoing coordination with City throughout the duration of the project. The Consultant Team will participate in regularly scheduled bi-weekly meetings with City staff throughout the entire project.

F.1. Bi-Weekly Check-In Calls – The Consultant Team will participate in regularly scheduled bi-weekly calls with City staff throughout the entire project. The calls will generally be conducted by phone/WebEx as schedules dictate. Subconsultants will participate in coordination meetings and calls when necessary and appropriate and when schedules permit.

F.2. Monthly Invoices and Progress Reports – Consultant will prepare monthly invoices and progress reports for review and approval by the City staff. The invoices will include all staff time and direct expenses including those for the Consultant Team. The monthly progress reports will identify tasks completed during the previous month and identify upcoming tasks, events, and deliverables for the upcoming month. Progress reports will be formatted as simple memorandum and attached to monthly invoices.

F.3. Ongoing Coordination – In addition to regularly-scheduled meetings and calls, it is anticipated that the Consultant Team will participate in ongoing project coordination and communication with the City staff, between team members, and with various stakeholders. This communication may include participation or assistance with the Planning Teams. While many tasks assume a level of team coordination and coordination between City staff and the Consultant Team, this task is intended to provide for a certain level of unanticipated coordination and strategy development above and beyond the base scope of work. There will be monthly Core Team conference calls throughout the planning process.

#### G. Translation of Public Meeting Materials and On-Site Interpretation

The Consultant will provide translated materials for key documents – display boards, maps, brochures, meeting fliers, etc. – at Community Meetings and Open Houses, and for Intercept/Pop-Up Events, as needed by the City staff. The Consultant will also provide On-Site Translation support for up to two Community Meetings or Open Houses per plan area, as requested.

### 3.4 The following shall apply to all tasks specified in Article III. Scope of Services.



- 3.4.1 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding, and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.
- 3.4.2 Consultant shall have a reasonable right to rely upon the accuracy and completeness of information provided by the City.
- 3.4.3 Consultant shall not be responsible for delays in meeting deliverable deadlines that may result due to causes beyond Consultant's reasonable control, provided Consultant notifies City in writing at least fifteen (15) days prior to any such deadline. The City may authorize additional calendar days or make adjustments to the Work Schedule and Compensation Schedule and related deliverables, within the existing scope of this Agreement, upon mutual Agreement in writing, between the Director and Consultant, in accordance with Article XVI. Amendments.

#### **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, City agrees to pay Consultant an amount not to exceed \$2,281,000.00 as total compensation, to be paid to Consultant as follows:
- 4.2 Invoices shall be submitted monthly for work performed. Invoice shall be accompanied by progress report of accomplishments and work products within the period. If progress is satisfactory within each invoice period, according to the Work Plan and Compensation Schedule attached as "Exhibit I," payment will be issued.
- 4.3 Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and upon approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Planning Department, Attention: Rudy Niño, Jr., P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1

above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing in accordance with Article XVI. Amendments.

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

## **V. OWNERSHIP OF DOCUMENTS**

- 5.1 Any and all writings, documents, or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document, or information shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents, and information as City desires, without restriction.
- 5.3 City shall own all right, title, and interest in all intellectual property delivered by the Consultant under this Agreement, including, without limitation, all text, drawings, graphs, tables, photographs, illustrations, and other content in fulfillment of this Agreement and related documentation developed by the Consultant for the City (collectively, "Work Product"). All such Work Product shall be considered "Works Made for Hire" (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of City. Consultant hereby assigns to City for no additional consideration, all worldwide right, title, and interest that it may possess in such Work Product including, but not limited to, all intellectual property rights thereto and Consultant shall execute such further assurances evidencing such assignment as City may require from time to time. Upon request, Consultant will take such steps as are reasonably necessary to enable City, at City's cost and expense, to carry out the intent of the above assignment and to record such assignment.

## **VI. RECORDS RETENTION**

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately, and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any

extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving, or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant’s expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.
- 6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon 30 calendar days’ written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 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 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required; or

7.4.4 Performing unsatisfactorily.

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

7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested by City.

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

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

#### VIII. NOTICE

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

If intended for City, to:

Rudy Niño, Jr.  
City of San Antonio  
Planning Department  
  
PO Box 839966  
San Antonio, Texas 78283-3966

If intended for Consultant, to:

Daniel Iacofano  
CEO/Principal  
MIG, Inc.  
421 Sixth Street, #1  
San Antonio, Texas 78215

#### IX. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability, unless exempted by state or federal law, or as otherwise established herein.

#### X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish

copies of all required endorsements and completed Certificate(s) of Insurance to the City's Planning Department, which shall be clearly labeled "SA Tomorrow Sub-Area Planning Phases 3, 4, and 5" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Planning Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Damage to Property Rented to You	For <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made basis)	\$1,000,000 per claim, to pay on behalf of

To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. UAV Commercial Liability Insurance	\$1,000,000 per claim.

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

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

City of San Antonio  
 Attn: Planning Department  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

10.6 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 ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

## XI. INDEMNIFICATION

- 11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts**



or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees, or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Economic & Planning Systems, Inc. (EPS); Cambridge Systematics, Inc.; Mosaic; Auxiliary Marketing Services; BowTie; Worldwide Languages; Able City; and WSP. Any deviation from this subcontractor list, whether in the form of deletions, additions, or substitutions shall require written approval by the Director in accordance with Article XVI. Amendments, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for

performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

- 12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer, or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director, in accordance with Article XVI. Amendments. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee, or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

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

### **XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

- 14.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (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 (EDD) 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 herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

#### 14.2 Definitions.

**Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the degree of aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors,

usually pursuant to a solicitation process. (Contract awards are distinguished from contract payments, the first, only reflect the anticipated dollar amounts the second, reflect actual dollar amounts that are paid to a contractor under an awarded contract).

**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 Respondent’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 Respondents 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 authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

**Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

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

**Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or

designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

**Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project- specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the Respondent’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 Respondent’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 Respondent; and documentation of consultations with trade associations and CONTRACTORS 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 or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

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

**M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

**M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts

that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

**M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in 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 1/16<sup>th</sup> 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.

**Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

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

**Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

**SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.

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

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

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the SBEDA Program.

**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 CONTRACTOR'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 CONTRACTOR'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.

#### 14.3 SBEDA Program Compliance – General Provisions

As CONTRACTOR 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 CONTRACTOR’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 hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

14.3.1 CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’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 Originating Department, 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;

14.3.2 CONTRACTOR 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 CONTRACTOR or its subcontractors or suppliers;

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

- 14.3.4 CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR 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 CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
- 14.3.5 CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
- 14.3.6 CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- 14.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- 14.3.8 CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

#### 14.4 SBEDA Program Compliance – Affirmative Procurement Initiatives.

The CITY has applied the following contract-specific Affirmative Procurement Initiatives (API) to this contract. CONTRACTOR hereby acknowledges and agrees that the selected

API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are necessary to attain satisfactory performance under this Agreement:

- 14.4.1 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, RESPONDENT affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), RESPONDENT agrees not to subcontract more than 49% of the contract value to a non-SBE firm, and
- 14.4.2 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, RESPONDENT affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), RESPONDENT agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm, and
- 14.4.3 M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract or self-perform at least *sixteen percent (16%)* of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). If the Prime CONTRACTOR is a certified M/WBE firm, then the CONTRACTOR is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime CONTRACTOR does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

The Subcontractor/Supplier Utilization Plan which CONTRACTOR submitted to City with its response for this contract and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain this M/WBE subcontracting goal as required in the solicitation shall render its response non- Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain a subcontracting goal for

M/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

14.4.4 Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal(s) of 16% respectively, that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of June 2019, African-American owned firms represent approximately 3.09% of available subcontractors, Hispanic-American firms represent approximately 7.43%, Asian-American firms represent approximately 0.67%, Native American firms represent approximately 0.16%, and Women-owned firms represent approximately 3.89% of available Professional Services subcontractors.

14.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract 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, CONTRACTOR 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 the company retaliate against any person for reporting instances of such discrimination. The company 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. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate

this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

- 14.6 Prompt Payment. Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.
- 14.7 Violations, Sanctions and Penalties. In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:
- 14.7.1 Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
  - 14.7.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
  - 14.7.3 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;
  - 14.7.4 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
  - 14.7.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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



1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; or
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).

#### **XV. CONFLICT OF INTEREST**

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies, or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
  - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
  - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

#### **XVI. AMENDMENTS**

- 16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be effected by amendment, in writing, executed by both City and Consultant.

16.1.1 City Manager or designee shall have authority to execute amendments on behalf of the City for any increase in expenditures by the City beyond those listed in this Agreement, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds by City Council.

16.1.2 The Director shall have authority to execute all other amendments on behalf of the City that do not increase expenditures by the City beyond those listed in this Agreement, without further action by the San Antonio City Council, such as but not limited to extensions of the term, revisions to the scope of services, adjustments to the work plan and compensation schedule, and changes to the list of approved subconsultants.

#### **XVII. SEVERABILITY**

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

#### **XVIII. LICENSES/CERTIFICATIONS**

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

#### **XIX. COMPLIANCE**

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

#### **XX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be

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

#### **XXI. LAW APPLICABLE & LEGAL FEES**

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

#### **XXII. LEGAL AUTHORITY**

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

#### **XXIII. PARTIES BOUND**

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

#### **XXIV. CAPTIONS**

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

## **XXV. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits: **Exhibit I – Work Plan and Compensation Schedule.**

## **XXVI. ENTIRE AGREEMENT**

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

## **XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 27.1 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.
- 27.2 "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.
- 27.3 "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.
- 27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel

during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXVIII. PROHIBITED CONTRIBUTIONS**

- 28.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 28.2 Consultant acknowledges that the City has identified this Agreement as high profile.
- 28.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**CONSULTANT**

*Moore Iacofano Goltsman, Inc.*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney

**EXHIBIT I**  
**Work Plan and Compensation Schedule**

Proposed Project Budget: Phases 3 and 4 of  
 SA Tomorrow Sub-Area Planning

		Professional Fees Total
Task		
1	Project Chartering	<b>\$57,100</b>
2	Analysis and Visioning	<b>\$265,016</b>
3	Aerial Photography and Visualization	<b>\$36,740</b>
4	Plan Framework	<b>\$468,940</b>
5	Recommendations and Implementation Strategy	<b>\$278,552</b>
6	Documentation and Adoption	<b>\$302,440</b>
7	Ongoing Coordination and Engagement	<b>\$872,212</b>
<b>Total</b>		<b>\$2,281,000</b>

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