

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
FEDERAL REPRESENTATION SERVICES**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager, and Clark Hill PLC (dba Clark Hill Strasburger (“Consultant”), both of which may be referred to individually as a “Party” or collectively as the “Parties”.

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

**I. DEFINITIONS**

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

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

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

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

**II. TERM**

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

**III. SCOPE OF SERVICES**

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

members of the firm will be responsible for the delivery of services through this Agreement: Kevin F. Kelly, who shall be lead consultant. Prior to replacing any team member, Consultant shall receive written approval from the City.

Consultant shall:

- 3.1.1 Assist in the formulation, adoption by City Council, and implementation of the City's Federal Legislative Program for the 116<sup>th</sup> and 117<sup>th</sup> Congress. City priorities for the 116<sup>th</sup> Congress include military protection, transportation infrastructure, affordable housing, and aviation;
- 3.1.2 Develop and implement strategic plans, including timelines, goals, objectives and expected outcomes for the advancement of the issues in the City's Federal Legislative Program and continuously monitor and update such plans to maximize the opportunities for success. Consultant will present strategic plans to the Director, the City Manager, or their designee, for approval;
- 3.1.3 Identify opportunities for each federal initiative of the City for oral and/or written testimony before congressional committees and public hearings, unless directed otherwise by the Director, the City Manager, or their designee. Identify committees of jurisdiction responsible for identified federal legislative priorities. Develop strategies and execute tactics in leveraging key relationships with authorizers and appropriators of relevant committees. This will include providing written comments on executive branch regulatory proceedings. Consultant shall be responsible for the development of all testimony and written communications with the federal government;
- 3.1.4 Provide timely information and guidance on federal funding, identify notice of funding opportunities to support City programs and services, advocate on behalf of grant applications and support federal consideration of City applications. Conduct research and develop contacts and relationships to identify unique funding opportunities to support City program, services, and priorities;
- 3.1.5 Plan and arrange high level meetings in Washington D.C. with key members of the Administration, Congress and/or the Agency heads in the Executive branch for the Mayor, City Council, Manager and/or the Chair of the Intergovernmental Relations Council Committee for the purpose of advancing the City's Federal Legislative Program and strategic plans;
- 3.1.6 Develop a comprehensive briefing book and itinerary for Mayor, City Council, City Manager and City staff trips to Washington, D.C. to include the following: recommend an agenda for the trip, provide the necessary background information for each subject in the briefing book. Arrange for scheduling, transportation, meeting facilities and meals for trip participants as requested by Director;

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

- 3.4 Performance measures. A matrix indicating performance measures which will be utilized in evaluating the performance of Consultant on a monthly basis will be incorporated to this agreement as Exhibit I. Performance measures will be developed by the Director and agreed to by the parties within one month of signing of the agreement. Such measures, once agreed to by the Parties, will be incorporated into this Agreement as an addendum without the necessity of any further action.

#### **IV. COMPENSATION TO CONSULTANT**

- 4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant a monthly amount not to exceed \$16,666.00, for a total annual amount not to exceed \$200,000.00.
- 4.2 Consultant shall invoice City for the monthly fee and City shall pay such invoice within 15 business days, subject to the provisions of Section 3.3.
- 4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The Parties 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 and which may be required to be approved by the San Antonio City Council by passage of an ordinance.
- 4.4 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 AND LICENSES**

- 5.1 In accordance with Texas law, Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Consultant pursuant to this Contract shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 The term "local government record" as used in this Agreement shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.
- 5.3 Consultant acknowledges and agrees that all local government records, as described in this Agreement, produced in the course of the required work will belong to and be the

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

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

## **VI. RECORDS RETENTION**

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

## **VII. TERMINATION**

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

or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. If Consultant defaults in the performance of this Agreement in a manner stated in this Section 7.4, that shall be considered an event of default. City shall deliver written notice of the default specifying such matter(s) in default. Consultant shall have 15 calendar days after receipt of the written notice in accordance with Article VIII. Notice to cure such default. If Consultant fails to cure the default within such 15-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of the 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 Bankruptcy or selling substantially all of company's assets.

7.4.2 Failing to perform or failing to comply with any required covenant.

7.4.3 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 in this Agreement, 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, 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 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.

7.7 Within 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 the 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

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

If intended for City, to:

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

If intended for Consultant, to:

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

### IX. INSURANCE

- 9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Intergovernmental Relations Department, which shall be clearly labeled "***Federal Representation Services***" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform

under this Agreement until such certificate and endorsements have been received and approved by City's Intergovernmental Relations Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

- 9.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but such changes must be approved by Consultant. In no instance will City allow modification whereby City may incur increased risk.
- 9.3 Consultant's financial integrity is of interest to City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage 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 2. Employers' Liability	Statutory \$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	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

- 9.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same categories of insurance coverage required of Consultant and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insured. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Consultant. Consultant



shall provide the City with the certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

9.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided in Article VIII above within 10 calendar days. Consultant shall pay any costs incurred resulting from provision of these documents.

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.

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

9.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Consultant to stop work, and/or withhold any payment(s) which become due to Consultant until Consultant demonstrates compliance with the requirements of this Agreement.

- 9.9 Nothing contained in this Agreement shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 9.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Agreement.
- 9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 9.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

#### **X. INDEMNIFICATION**

- 10.1 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, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY arising out of, resulting from or related to CONSULTANT'S negligence in connection with its activities under this AGREEMENT. However, notwithstanding the above, the foregoing indemnity and agreement to hold harmless shall not apply to any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and/or suits or to any other matters arising or resulting from the sole negligence of CITY, its officers or employees or the sole negligence of any other persons or entities other than CONSULTANT.**

**The provisions of this INDEMNIFICATION 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. 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 Article.**

- 10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation under this Agreement to defend and**

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

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

## XI. INTELLECTUAL PROPERTY

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

11.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

11.3.4 Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City;

11.3.5 The Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim; and

11.3.6 The liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provided Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

## **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 Any work or services approved for subcontracting shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director or City Council, as required.

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

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

### **XIII. INDEPENDENT CONTRACTOR**

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

### **XIV. CONFLICT OF INTEREST**

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

14.2 Consultant warrants and certifies as follows:

- (i) Consultant and its officers, employees and agents are neither officers nor employees of City.
- (ii) Consultant has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.3 Consultant acknowledges that City's reliance on the above warranties and certifications is reasonable.

#### **XV. SEVERABILITY**

15.1 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 that such invalidity, illegality or unenforceability shall not affect any other clause or provision and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained in this Agreement; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

#### **XVI. LICENSES/CERTIFICATIONS**

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

#### **XVII. COMPLIANCE**

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

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

17.3 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

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

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

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

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

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

## **XVIII. NONWAIVER OF PERFORMANCE**

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

**XIX. LAW APPLICABLE**

- 19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 19.2 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.

**XX. LEGAL AUTHORITY**

- 20.1 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.

**XXI. PARTIES BOUND**

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

**XXII. CAPTIONS**

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

**XXIII. INCORPORATION OF EXHIBITS**

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

**XXIV. ENTIRE AGREEMENT**

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

**EXECUTED and AGREED** to this the 20<sup>th</sup> day of June, 2019.

**CITY:**

**CONSULTANT:**



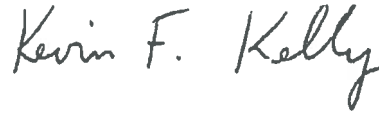
CITY OF SAN ANTONIO

CLARK HILL PLC  
(dba CLARK HILL STRASBURGER)



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Carlos J. Contreras, III  
Assistant City Manager



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Kevin F. Kelly  
Member

Approved as to Form:



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Camilla W. Kumar  
City Attorney