

AN ORDINANCE **2016-05-19-0370**

AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREGONESE ASSOCIATES, INC. FOR CONSULTANT SERVICES TO CONDUCT A CITYWIDE CORRIDOR LAND USE PLANNING STUDY TO OPTIMIZE LAND USE AND TRANSIT INVESTMENTS TO SUPPORT THE IMPLEMENTATION OF SA TOMORROW AND VIA VISION 2040 PLANNING EFFORTS IN AN AMOUNT NOT TO EXCEED \$250,000.

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WHEREAS, City staff has determined that an analysis of land use planning along twelve (12) significant transportation corridors to identify development patterns that accommodate projected growth and support high-capacity transit use in accordance with Vision 2040 is necessary to support the implementation of SA Tomorrow; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to authorize an agreement with Fregonese Associates, Inc to provide professional consulting services to conduct a citywide corridor land use planning study to optimize land use and transit investments to support SA Tomorrow and VIA Vision 2040 planning efforts, **NOW THEREFORE**;

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

SECTION 1. The City Manager or her designee is hereby authorized to negotiate and execute a professional services agreement with Fregonese Associates, Inc to conduct a citywide corridor land use planning study to optimize land use and transit investments to support SA Tomorrow and VIA Vision 2040 planning efforts in an amount not to exceed \$250,000, with substantially the same terms and conditions as those set out in the draft agreement attached hereto as **ATTACHMENT "I"**.

SECTION 2. Funding in the amount of \$250,000.00 for this ordinance is available in Fund 29850000, Internal Order 850000000004 and General Ledger 5201040, as part of the Fiscal Year 2016 Budget.


SECTION 3. Payment not to exceed the budgeted amount is authorized to Fregonese Associates, Inc. and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SG/mb
05/19/2016
Item #24

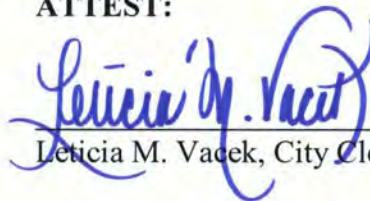
SECTION 5. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 19th day of May, 2016.




M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Martha G. Sepeda, Acting City Attorney

Fer

Agenda Item:	24 (in consent vote: 4, 5, 6, 7, 10, 11, 12, 16, 19, 20, 22, 23, 24)						
Date:	05/19/2016						
Time:	09:39:40 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a contract for consulting services with Fregonese Associates, Inc in an amount not to exceed \$250,000.00 to conduct a Corridor Land Use Planning Study to support SA Tomorrow and VIA Vision 2040 planning efforts. [Peter Zanoni, Deputy City Manager; Bridgett White, Interim Director, Planning and Community Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8	x					
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**PROFESSIONAL SERVICES AGREEMENT
FOR
CORRIDOR LAND USE PLANNING STUDY**

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. 2016-05-_____ passed and approved on the 19th day of May, 2016 and Fregonese Associates, Inc. by and through its President, John Fregonese (“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:

“**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 Planning and Community Development Department.

DPCD shall mean the City’s Planning and Community Development Department.

Guide to Transit Supportive Land Use shall mean the document created by VIA Metropolitan Transit in 2014, a copy of which has been provided to Consultant

VIA shall mean Metropolitan Transit Authority

VIA’s “Premium” and “Premium Plus shall mean the material and concepts, a copy of which has been provided to Consultant in the development of VIA Vision 2040

VIA Vision 2040 shall mean VIA Long Range Comprehensive Transportation Plan “**LRCTP**”, a copy of which has been provided to Consultant

II. TERM

2.1. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on the date of execution of this Agreement by both Parties and shall end on May 19 2017. Notwithstanding **Article XVI AMENDMENTS**, the City shall have the sole option to extend the agreement for one (1) additional six (6) month term, with the same conditions. If the City exercises the renewal option the term begins on May 20, 2017 and ends on November 21, 2017. The City Manager or her designee is authorized to execute the extension to this Agreement on behalf of the City.

2.2. Consultant shall adhere to the timeline schedule as described in **EXHIBIT "A"** attached hereto and incorporated herein for all purposes

2.3. 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 agrees to provide the services described in this **Article III. Scope of Services** in exchange for the compensation described in **Article IV. Compensation**.

3.2. Consultant will provide objective data and sound qualitative and quantitative analysis relevant to the following three primary tasks listed in this **Article III Scope of Services**: Scenario Planning for Land Use Optimization, Corridor & Station Area Planning, and Public & Stakeholder Engagement.

3.2.1 Consultant will provide a land use planning analysis for twelve transportation corridors in San Antonio that identify development patterns that will accommodate projected growth and support high-capacity transit use. The plans will provide an analysis for both a corridor level and a station area level for infill development, economic opportunity, multimodal connectivity, and sustainability. The plans will provide solutions for detailed land use, zoning and infrastructure solutions.

3.2.2 Consultant will develop a land use profile/ scenario for the following twelve selected corridors:

Corridor Name	Study Limits	Corridor Length*
Austin Highway	Centro Plaza to Rolling Oaks	16.4 miles
Bandera	Leon Valley to Centro Plaza	7.2 miles
Commerce-Houston	Lackland AFB to AT&T Center	9.0 miles
Fredericksburg	Centro Plaza to UTSA	16.5 miles
General McMullen-Babcock	South Park Mall to Medical Center	15.0 miles
Huebner-Grissom	Alamo Ranch to Medical Center	12.0 miles
Loop Premium (Partial)	Military Drive and WW White	21.2 miles
New Braunfels Avenue	Centro Plaza to Brooks City-Base	11.6 miles
Randolph	Centro Plaza to Randolph AFB	6.7 miles
Rockport Subdivision	Centro Plaza to Brooks City-Base	7.8 miles
San Pedro	Centro Plaza to Stone Oak	20.5 miles
Zarzamora	Medical Center to TAMU-SA	17.7 miles
Total Corridors: 12		Total: 161.6 miles

* Corridor lengths are approximate and reflect sections within City of San Antonio limits only.

3.3. Project Management

3.3.1 Kickoff Meeting: The Consultant will hold a kick-off meeting in coordination with the DPCD. This meeting will be held remotely and include members of the consultant team, VIA Metropolitan Transit, and City staff.

3.3.2 Bi-Weekly Meeting: Over the course of the 12-month contract, the Consultant will hold a standing meeting on a bi-weekly basis with City staff. These meetings will be conducted via GoToMeeting or a similar service and may be rescheduled as needed by the client.

3.3.3 Bi-Monthly Steering Committee Briefings: The Consultant will work with City staff to assemble a steering committee. This internal committee will be comprised of project stakeholders including but not limited to City, VIA, and SAHA staff. The Consultant will hold bi-monthly briefings with the steering committee via webinar.

3.4. Scenario Planning for Land Use Optimization - Task 1

3.4.1 "Optimized" Corridor Scenario - Task 1.1

Consultant will utilize the corridor existing conditions information supplied by DPCD and the corridor land use profiles developed as part of VIA's LRCTP, to develop an optimized land use scenario for the ½ mile surrounding VIA's proposed high capacity transit stations. This scenario will explore the potential for additional housing,

commercial, and civic development needs (e.g. green space, transit facilities, civic facilities, schools) within each of VIA's "Premium" and "Premium Plus" transit corridors. The optimized scenario will include corridor-wide metrics developed in Envision Tomorrow, a GIS-based scenario planning tool developed by Consultant, and provide the tool and all GIS shapefiles as well as supporting visual documentation. The proposed optimized scenario for each corridor shall demonstrate the transformative power of transit as an urban amenity while seeking to achieve the following goals outlined in the Guide to Transit Supportive Land Use document created by VIA Metropolitan Transit in 2014:

- Reduced household transportation costs
- Provision of stable transportation costs even when gas prices rise
- Reduced time spent in traffic
- Increased physical activity providing health benefits and reductions in individual and public health costs
- Increased transportation mobility and housing choices
- Expanded access to services, jobs, and other destinations
- More attractive, walkable communities, generating a sense of place
- Reduced greenhouse gas (GHG) emissions
- Preserved open space and natural resources
- Improved air and water quality
- Promotion of redevelopment and reinvestment in existing communities
- Increased revenue from more efficient land use
- Increased value and revenue generated from new development
- Leverage of existing infrastructure investments
- Reduced need for expensive roadway expansions
- Connection between communities and people within them to each other and their daily needs

3.4.2 Corridor Metrics - Task 1.2

Consultant will develop metrics for each corridor that address the following seven (7) topic areas:

1. Market feasibility
 - a. To what extent will the private development market be willing to implement the proposed land use scenario?
 - b. To what extent will the public sector and its partners need to intervene to foster implementation of the future land use scenario by the private sector?
2. Financial feasibility

- a. What are the estimated capital and operations/ maintenance costs to complete the major public improvements identified in the proposed land use profile?
 - b. How do capital and O&M costs for the proposed land use profile compare to those for a conventional, automobile-oriented land use scenario?
3. Equity Impacts
- a. To what degree will the proposed land use profile address housing affordability needs along the corridor and in the broader community?
 - b. What investments will the public and private sectors need to make in order to meet the affordable housing goals along the corridor and in the broader community?
 - c. To what extent will the proposed land use profile meet the employment, retail, and service needs of the community's more vulnerable residents?
 - d. To what degree will the proposed land use profile address the built environment needs for persons with physical limitations and/or other disabilities?
4. Environmental impacts
- To what extent will implementation of the proposed land use profile contribute to broader sustainability goals identified by the City and its partners?
5. Community acceptance
- What efforts may be required to ensure that affected stakeholders, the neighboring community, and the region as a whole, perceive the benefits of implementing the proposed land use profile?
6. Impacts on local and regional multimodal traffic patterns
- a. To what extent would the proposed land use profile result in the desired travel mode split for the corridor and the metropolitan area?
 - b. To what degree would the proposed land use profile serve in minimizing the negative effects of "trip chaining?"
7. Policy needs
- What changes to zoning, overlay districts, development codes, incentive programs, etc. will be required to ensure implementation of the proposed land use profile in lieu of a conventional, automobile-oriented land use scenario?

3.4.3 Deliverables

- Calibrated Envision Tomorrow “optimized scenario” cover ½ mile around proposed stations in VIA’s 12 “Premium” and “Premium Plus” vision corridors – adapted from VIA LRCTP Regional TOD Scenario
- Corridor land use profile summary PowerPoint with indicators, grouped by 7 topic areas
- Technical memorandum

3.5 Corridor and Station Area Planning - Task 2

3.5.1 Corridor-Wide Strategies

Upon the development of an optimized scenario for each corridor, the Consultant will provide an analysis of available strategies/ investments to support the optimized land use scenario developed for Task 1. Each corridor analysis will already include an assessment of strategies to support the optimized land use scenario developed for Task 1 and improve accessibility and connectivity including, but not limited to, the following:

- Infrastructure improvements to accommodate pedestrians, bicycles, transit, and automobiles
- Zoning and policy changes
- Incentives to address development feasibility gaps

Working with the City and VIA staff, the Consultant will add additional detail to the available strategies, required improvements, and incentives identified in the regional analysis completed as part of VIA’s LRCTP, so as to be specific about strategies available to the City.

3.5.2 Level 1 Station Area Identification - Task 2.2

Although each corridor analysis is likely to result in a different proposed land use profile, each should be developed to promote increased transit ridership and non-motorized travel as well as greater efficiencies in land use. Thus, the land use optimization exercise in Task 1 shall result in the identification of station areas along each of the corridors, referred to in this document as Level 1 Station Area Identification. For the purposes of this station area identification & planning exercise, station areas shall be identified based on the station area identification exercise conducted by VIA and consider the land area within a half-mile radius of an illustrative transit stop/station along the study corridor, or approximately 320 acres.

Using the typology assignment completed as part of the VIA LRCTP, the Consultant will work with CoSA and VIA staff to assign SA Tomorrow typologies or create linkages between VIA and CoSA typologies as needed. DPCD and VIA Metropolitan Transit will provide the selected firm with a matrix identifying each of the station areas and will include the following information on existing conditions:

- Corridor in which the proposed station is located
- Proposed station area name
- Nearest intersecting street
- Station area typology
- Station area population
- Number of housing units and/or households in station area
- Number of employees in station area
- Current land use mix (based on most recently available zoning)
 - Percent residential
 - Percent commercial
 - Percent industrial
 - Percent other zoning
- Existing daily bus ridership, if located at an existing bus stop

3.5.3 Level 2 Station Area Concepts - Task 2.3

Upon identifying station areas and defining each area by a typology, several of the station areas will be identified for further study. Level 2 Station Area Concepts shall include recommendations for land use optimization at the parcel level as well as general infrastructure recommendations for up to twelve (12) station areas. The GIS-based scenario planning tool utilized to complete Task 1 should also be utilized for the development of the Level 2 Station Area Concepts. At least one (1) photorealistic rendering should be provided for each station area concept.

For five (5) of the twelve (12) station area concepts, the Consultant will adapt concept-level work completed as part of VIA's LRP. This includes parcel-level land use information and photorealistic renderings. Once adapted to meet the graphical and content needs of the City an additional seven (7) station areas will be identified and concepts will be created for a total of twelve (12).

- The selected firm will identify the following for each station area as part of the Level 2 Station Area Concept:
 - Optimized land use profile/ scenario that includes an assessment of the potential for additional housing, commercial, and civic development needs (e.g. green space, transit facilities, civic facilities, schools) within the station area.
 - Infrastructure improvements to accommodate pedestrians, bicycles, transit, and automobiles
 - Zoning and policy changes
 - Incentives to address development feasibility gaps
 - Targeted affordable housing plan
 - Pedestrian, bicycle, transit, and automobile circulation plan

3.5.4 Level 3 Station Area Plans - Task 2.4

Some high-capacity transit facilities are already under development in San Antonio and, therefore, require a more detailed approach to station area planning in the short term. Thus, Level 3 Station Area Plans shall include recommendations for detailed land use, zoning/ overlays/ form-based codes, infrastructure recommendations, urban design recommendations, and implementation guidelines for up to six (6) station areas. The station areas selected for Level 3 analysis are to be distinct from the station areas selected for the Level 2 analysis. In some cases, multiple overlapping station areas may be combined to create a single, larger station area plan. Special consideration should be given to land area within one-quarter mile and within 500 feet of the proposed stations. As with the Level 2 analysis, the selected firm should use a digital scenario planning tool for the development of the Level 3 Station Area Plans. At least two (2) photorealistic renderings should be provided for each station area plan. Consultant will identify the following for each station area as part of the Level 3 Station Area Plan:

1. Optimized land use profile/ scenario that includes an assessment of the potential for additional housing, commercial, and civic development needs (e.g. green space, transit facilities, civic facilities, schools) within the station area.
2. Infrastructure improvements to accommodate pedestrians, bicycles, transit, and automobiles
3. Zoning and policy changes
4. Incentives to address development feasibility gaps
5. Targeted affordable housing plan
6. Pedestrian, bicycle, transit, and automobile circulation plan
7. Open space plan
8. Urban design guidelines
9. Implementation recommendations
 - a. Administrative
 - b. Catalyst projects/ initial investments
 - c. Financial strategies/tools

3.5.5 Site Preparation and Development Offering Task 2.5 (6-Month Process)

Site Identification Methodology - Task 2.5.1

In addition to level 2 station area concepts and level 3 station area plans, the Consultant will develop a methodology for selecting individual publicly-owned sites for development. This methodology will be replicable and use data that is readily available, either through local/national/statewide datasets, or through data developed as part of the corridor land use study. Consultant, City staff and VIA staff will use this methodology to select one (1) publicly-owned site for Level 4 Site Preparation.

3.5.6 Pre Development Offering/ Due Diligence (Month 1) - Task 2.5.2

The Consultant will work with City staff and other partners, to (1) establish development objectives for the site; (2) based on those objectives, generate a conceptual site plan; and (3) identify potential sources and uses to create a proposed capital stack for the project.

In this phase the Consultant will meet with the City staff in a three hour charrette to accomplish these Phase 1 goals. Consultant will provide the City staff with an order of magnitude understanding of the potential gap for the preferred conceptual site plan, to provide an estimated ROI (return on investment) to the community. Consultant will build off of existing plans and activities currently underway to best leverage this site. In conjunction with the conceptual site plan, Consultant will draft a clear narrative and development goals for the site. Due diligence will include the following components:

- Goals for the Project: Community leader/stakeholder expectations. How to manage these expectations.
- Property in Context: obtain general project overview/context/vision for the property and the larger neighborhood.
- Key Stakeholders: identify key partners, potential developers, and other stakeholders to engage in the process.
- Public Tools and financing options/strategies for a public-private partnership: Identify the menu of potential tools, and determine what development parameters will be necessary to leverage these tools (density, affordability, design, community benefits, etc.).
- Zoning, transportation and land use context: Identify and summarize the range of allowed uses, development standards, review processes to clearly communicate the regulatory context to prospective developers.
- Identify key theme and goals: Review previous planning efforts, technical reports (economic, environmental, traffic, etc.) to identify key themes, and development goals for the site.

3.5.7 Developer Engagement / Marketing (Month 2) – Task 2.5.3

In this phase of the project, Consultant will create a marketing and engagement strategy to refine development objectives, identify the best form of development offering, refine the financial resources, and gauge developer interest in the opportunity (in order to ascertain what actions or participation the City staff may need to take to attract their interest). Consultant will work with the City staff and key stakeholders, primarily through interviews, and on site tours. The interviews will serve to:

- Identify key developer and community issues or concerns, with the intention of refining the development offering to address these issues.
- Establish metrics to evaluate project in terms of the public benefit as well as a financial return on investment.

- Gauge where the market is to determine what level (if any) public support will be necessary to achieve the development goals for the site and make the project financially feasible.
- Develop a sense of the best form of the development offering.
- Understand and manage community leaders/stakeholders and their expectations

3.5.8 Development Offering / Marketing (Month 3) – Task 2.5.4

Consultant will work with City staff to finalize content for a development offering including creating a highly graphic document and supporting marketing materials. Consultant will also develop a marketing strategy for City staff to implement to get the word out to the development community.

- Draft offering, based on feedback from City staff, developers, and other stakeholders.
- Following City staff review/edit, finalize offering for DPCD to issue
- Assist City staff in marketing – press release, pre-bid meeting and site tour, reach out to best prospective respondents

3.5.9 Developer Selection and Negotiation (Month 4-6) – Task 2.5.5

Consultant will assist the City staff in the review, selection and negotiation process on an as-needed basis. Consultant will work with City staff to identify an appropriate “point of exit” should negotiations exceed the six-month timeframe for task 2.5.

- Assist City staff (and, if appointed, a Selection Committee) in review of submittals
- City staff will determine whether to (A) interview short list; (B) decline all submittals; (C) select one without interviews
- Assist City staff in negotiating an Exclusive Negotiating Agreement with the selected team;
- Team then initiates due diligence (schematic design, entitlements, sources and uses, technical studies)
- Client Board briefings (Executive Session) on progress toward a final development agreement.
- Assist City staff in negotiating formal development agreement(s)

3.5.10 Action Plan Document -Task 2.6

All of the analysis completed as part of tasks 1 and 2 will culminate in a detailed and visually engaging action plan document. This plan document will highlight, from the City’s perspective, the actions required to realize the optimized corridor and station-area concepts/plans including corridor land use concepts, level 2 station area identification, level 3 station area plans, and the level 4 development offering.

3.5.11 Deliverables - Task 2:

- Corridor strategies and recommendations for each of VIA's "Premium" and "Premium Plus" corridors. This will be a further refined version of the corridor profiles developed for the LRCTP
- Level 1 station area identification and typology assignment summary PowerPoint / GIS files
- Adapted level 2 station area concepts for five (5) previously identified station areas (from LRCTP)
- Seven (7) additional level 2 station area concepts including up to seven (7) photo realistic renderings
- Level 3 station area plans for up to six (6) station areas
- Two (2) photorealistic renderings for each of the six (6) station areas
- Methodology for identifying catalyst sites: technical PowerPoint/GIS files
- Request for Interest issued for on (1) catalyst site

3.6 Public & Stakeholder Engagement - Task 3

Consultant will provide a variety of public engagement approaches and implement outreach activities throughout the study including, but not limited to, area or citywide meetings, focus groups, web/social media outreach, and other mediums and materials related to SA Tomorrow and/or VIA Vision 2040. Public engagement meetings may be coordinated with, or held in conjunction with, events related to SA Tomorrow and/or VIA Vision 2040.

Consultant will:

- Raise awareness about the Corridor Land-Use Planning Study using both traditional and innovative techniques.
- Plan and facilitate informative and engaging public meetings, focus group/ steering committee meetings, and surveys at key points throughout the study.
- Develop and implement strategies for engaging underrepresented and hard-to-reach populations including, but not limited to, racial/ ethnic minorities, youth, young professionals, low-income households, and persons with barriers to participation such as limited transportation access, child care needs, and limited English proficiency.
- Produce meeting materials that are visually appealing and understandable to a variety of audiences.
- Utilize technologically innovative tools/ materials.
- Set engagement goals and regularly track and report progress.
- Offer digital and printed materials in both English and Spanish.

- Assist City staff in the development of materials to be used for presentations to City Council and/ or its commissions, CoSA and/ or VIA executive leadership, and other groups as needed.

3.6.1 Public & Stakeholder Engagement Work Plan - Task 3.1

The Consultant will work with City staff and the project steering committee to draft a public and stakeholder engagement work plan. This plan will outline key milestones and date ranges for geographically specific engagement as well as roles and responsibilities for City staff and consultant.

3.6.2 Project Website/Webpage - Task 3.2

Consultant will develop a project website to provide a platform for web-based outreach and to disseminate marketing materials related to the study. Consultant will work with City staff to determine whether this site should stand alone or be integrated into an existing domain such as www.SATomorrow.com. The standalone site or web page will adhere to desired branding standards.

3.6.3 Web-Based Outreach - Task 3.3

The 12 high capacity corridors identified in VIA's long range plan span approximately 150 miles and serve a range of unique neighborhoods across San Antonio. In order to gather input from stakeholders across a broad geographic area and to provide an alternative to traditional, in-person engagement, the Consultant will work with City staff to develop a web-based comment tool and survey. This tool may be primarily map-based and will allow users to contribute input on their land use/development vision for corridors and station areas as well as built environment improvements they see is crucial to realizing that vision. Marketing for this web-based tool may include e-mail blasts to key stakeholders, flyers, and on-site signage with QR codes linked directly to the tool and/or project website.

3.6.4 On-Site Outreach - Task 3.4

Geographically-specific outreach will focus on up to three (3) of the six (6) level 3 station areas. The Consultant will work with City staff to identify which of the three level 3 station areas will be selected for on-site outreach. While this outreach will occur proximate to the three (3) identified locations, the focus of the outreach will reach beyond station-area specific concerns. Rather, engagement efforts will be more general in nature, addressing issues that can be applied corridor and system-wide. The purpose of on-site outreach is to go to where people are – to intercept users of transit, pedestrians, shoppers, residents, and employees as they go about their day and get quick, targeted feedback on how they would like the station area to function. On-the ground outreach events may include one (1) of the following for each selected area:

- “Walkshops” – Facilitated walking tours that allow stakeholders to identify needs and opportunities in the public and private realm while the entire group experiences those issues. Comments are documented via smartphones or disposable cameras.
- Vision Window – Consultant will install a temporary plexi-glass canvas in a

selected area and will facilitate a brainstorming exercise as passers-by are prompted to draw their vision for a particular corner or right of way using colored erasable markers.

- Event Tabling –Consultant will bring a survey or mapping exercise to a cultural event to gather input of event attendees.

3.6.5 Focus Groups – Task - 3.5

In addition to geographically-specific on-site outreach, the Consultant will hold invitation-only focus group discussions targeted at local stakeholders, business owners, and residents proximate to up to three, level 3 station areas. The purpose of these discussions is to understand the locally-desired vision for the identified areas, identify issues, and develop strategies for reaching the vision.

3.6.6 Developer Interviews - Task 3.6

In order to support the more detailed strategies that will comprise the level 3 station area plans and help drive the level 4 development offering, Consultant will conduct up to five interviews with local developers. The purpose of these interviews is to help our team identify potential barriers to development, unique market conditions, and market demand for certain types of housing and commercial development.

3.6.7 Deliverables - Task 3

- Public and Stakeholder Engagement Work Plan
- Project website
- Web-based comment tool
- Three on-site events
- Three site-specific focus groups
- Three-to-five developer interviews

3.7 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, 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.

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 \$250,000 as total compensation, to be paid to Consultant as follows:

4.2 Consultant shall submit monthly invoices, based on work performed on each component of the **Scope of Services in Article III** of this Agreement, to City, in a form acceptable to City. 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 and Community Development, P.O. Box 839966, San Antonio, Texas 78283-3966. Invoice shall be accompanied by a progress report of accomplishments and work products within the period. Invoices shall not exceed \$80,000.00 for any given month. If progress is satisfactory within each invoice period, according to work plan and approved by Director, payment will be issued within 30 days of receipt.

4.3 Consultant shall adhere to the Budget Schedule as described in **EXHIBIT "B"** attached hereto and incorporated herein for all purposes.

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 and approved by the San Antonio City Council by passage of an ordinance therefore.

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; 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.

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.

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 upon ten 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.**

7.3.2 Bankruptcy or selling substantially all of company's assets

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

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 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.

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:

City of San Antonio
Planning and Community
Development Department
Bridgett White, Interim Director
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Consultant, to:

Fregonese Associates, Inc.,
John Fregonese, President
1525 SW Park Ave., Ste. 200
Portland, Oregon 97201

IX. INTELLECTUAL PROPERTY

9.1 City reserves the right to modify all documents. 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.

9.2 Consultant shall pay all royalties and licensing fees. Consultant shall hold the City harmless and indemnify the 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 in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

9.3 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:

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,

alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

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.

Consultant further agrees to:

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,

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:

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, 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, the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide 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.

9.4 Ownership and Licenses.

9.4.1 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.

9.4.2 The term "local government record" as used herein 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.

9.4.3 Consultant acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this contract, will belong to and be the property of City. Consultant shall be required to turn over to City all such records as required by said contract. Consultant 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.

9.4.4 In accordance herewith, Consultant, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Department of Planning and Community Development, which shall be clearly labeled "Corridor Land Use Planning Study" 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 be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 City's Department of Planning and Community Development. No officer or employee, other than 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 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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits \$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	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	\$1,000,000 per claim, to pay on behalf of

basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	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.
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10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names Consultant and City as additional insureds. Policy limits of the coverages carried by the subcontractors will be determined as a business decision of Consultant. Consultant shall provide 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 City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Planning and Community Development 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 insured 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 City is an additional insured shown on the policy;
- Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and

- Provide advance written notice directly to City of any suspension or non-renewal 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 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.

11.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. 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.

11.4 Employee Litigation - In any and all claims against any party indemnified hereunder 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 herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT, or any subcontractor under worker's compensation or other employee benefit acts.

XII. 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 subcontractor in the performance of this Agreement:

Cambridge Systematics
RJ Rivera Associates
Steve Nivin Consulting
E.D. Hovee & Co.
DKS Associates

Any deviation from this subcontractors list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, 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 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.

12.5 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 CONSULTANT

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 Solicitation Response and Contract Requirements and Commitment

Consultant understands and agrees that the following provisions shall be requirements of this contract. Consultant commits to comply with these requirements.

14.2 SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by 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.

14.3 Definitions

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

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

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a

transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Consultant to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if Consultant attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Consultant shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to 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 Consultant's or Respondents.

Good Faith Efforts – documentation of the Consultant's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the 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., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime 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 consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Consultant's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the

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

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

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

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

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

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

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by 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 this Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

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

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

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

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

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

Payment – dollars actually paid to Consultant's 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, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

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. For purposes of this agreement, this term refers to the Consultant.

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

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

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 MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in 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 S/M/WBE Program.

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

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

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or Consultant in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of each binding agreement between the Consultant and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm’s beneficial participation in 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 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR’s and/or S/M/WBE firm’s performance and payment under CITY contracts due to the CITY’s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

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

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

14.4 SBEDA Program Compliance – General Provisions

As Consultant acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of Consultant’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Consultant voluntarily agrees to

fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Consultant shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding Consultant's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the 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;
2. Consultant shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant or its Subcontractors or suppliers;
3. Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. Consultant shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or 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.
5. Consultant 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.

6. Consultant 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.
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 Consultant's Subcontractor / Supplier Utilization Plan, the Consultant 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 Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Consultant acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the Consultant and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and Consultant has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

14.5 SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Consultant 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 material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Consultant affirms that if it is presently certified as an SBE, Consultant agrees not to subcontract more than 49% of the contract value to a non-SBE firm; **and**

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Consultant affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), Consultant agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

14.6 Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall 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. Consultant'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. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

14.7 Prompt Payment

Upon execution of this contract by Consultant, Consultant 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 Consultant's reported subcontract participation is accurate. Consultant 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 Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new CITY contracts shall be issued to the Consultant 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.

14.8 Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

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

XV. CONFLICT OF INTEREST

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. 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 parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business 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 Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XVI. AMENDMENTS

The City may, by written notice to the Consultant, make reasonable changes unilaterally in the Scope of Services of this agreement. If any such changes cause an increase or decrease in the costs of or time required for performance of work under this agreement, an equitable adjustment shall be negotiated by the parties in the cost and performance, and this agreement shall be modified accordingly in writing executed by both City and Consultant. If the parties are unable to negotiate an equitable adjustment, the City shall have the option of allowing the continuation of this Agreement, under the terms provided prior to such unilateral change, or terminating this agreement in accordance with the termination provisions of this agreement.

The City Manager is authorized to negotiate an amendment or extension of this agreement without further action by the City Council provided the total cost of all amendments do not exceed the amount of \$50,000. Any such amendment shall be subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

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 City Council, 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

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.

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 "A" Corridor Land Use Schedule

EXHIBIT "B" Corridor Land Use Budget 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.

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

CITY OF SAN ANTONIO

CONSULTANT
Fregonese Associates, Inc.

(Signature)

(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: John Fregonese
Title: President
Date: _____

Approved as to Form:

Assistant City Attorney

DRAFT