

ORDINANCE 2019-06-06-0456

AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$331,000.00 AUTHORIZED PAYABLE TO LUNDY & FRANKE ENGINEERING, INC. TO PROVIDE A TOWER OF THE AMERICAS CONDITION ASSESSMENT, FUNDED FROM CERTIFICATES OF OBLIGATION AS INCLUDED IN THE FY 2019 – FY 2024 CAPITAL IMPROVEMENT PROGRAM.

* * * * *

WHEREAS, City Council approved within the FY 2019 Budget an allocation of \$331,000.00 in Deferred Maintenance Program funds to complete a conditions assessment for the Tower of the Americas; and

WHEREAS, the assessment shall provide projected costs to correct deficiencies and prioritize repairs in the immediate, 1 year, 5 year, and 10 year horizons; and

WHEREAS, the scope of the assessment includes the Tower's fire suppression systems, building enclosure, concrete shaft, mechanical systems, electrical systems, and plumbing systems; and

WHEREAS, a Request for Qualifications (RFQ) was released on November 28, 2018 and due January 8, 2019; and

WHEREAS, the RFQ was advertised in the San Antonio Hart Beat, City's website, Texas Electronic State Business Daily, and on TVSA; and

WHEREAS, six firms responded to the RFQ; and

WHEREAS, a selection committee consisting of representatives from Center City Development & Operations Department, Building & Equipment Services Department, Transportation & Capital Improvements Department, Aviation Department, and Parks and Recreation Department evaluated, scored, and ranked the submissions; and

WHEREAS, scoring was based on the published criteria, which included Experience and Qualifications of Prime firm and key sub-consultants, Team's experience with Texas regional issues and past experience with City of San Antonio contracts on similar projects, and Project Understanding; and

WHEREAS, this contract is within the scope of the SBEDA Program. However, due to a lack of available firms and/or subcontracting opportunities, the Goal Setting Committee was unable to apply a SBEDA tool this agreement; **NOW THEREFORE:**

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

SECTION 1. The City Manager or designee or the Center City Development and Operations Department or designee is authorized to execute a professional services agreement in the amount of \$331,000.00 with Lundy & Franke Engineering, Inc. to provide a Tower of the Americas Condition Assessment. A Copy of the agreement is attached hereto as **Attachment I**.


SECTION 2. Payment is authorized to be encumbered and made payable to OUR SA applicable towards eligible expenses per the Urban Renewal Plan in the amount not to exceed \$331,000.00 in Fund 43099000, WBS Element 35-00137-01-01, and GL 5201170.

SECTION 3. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

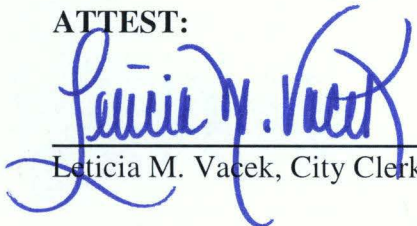
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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.

SECTION 5. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 6th day of June, 2019.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	13 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17)
Date:	06/06/2019
Time:	09:21:31 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a Professional Services Agreement in the amount of \$331,000.00 to Lundy & Franke Engineering, Inc. to provide a Tower of the Americas Condition Assessment, funded from certificates of obligation as included in the FY 2019 - FY 2024 Capital Improvement Program. [Lori Houston, Assistant City Manager, John Jacks, Director, Center City Development & Operations]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6	x					
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

SW/ah
6/6/19
Item #13

ATTACHMENT I

ATTACHMENT I

PROFESSIONAL SERVICES AGREEMENT

**STATE OF TEXAS
COUNTY OF BEXAR
OF SAN ANTONIO**

PROFESSIONAL SERVICES AGREEMENT

FOR THE TOWER OF AMERICAS CONDITION ASSESSMENT PROJECT

(RFQ – TCI112818MT)

This Agreement is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

Lundy & Franke Engineering, Inc.

549 Heimer

San Antonio, Texas 78232

an Engineer duly licensed and practicing under the laws of the State of Texas (hereafter referred to as "Consultant") (City and Consultant hereafter individually referred to as "a Party" and collectively referred to as "the Parties") said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for **TOWER OF AMERICAS CONDITION ASSESSMENT**, as set forth herein in connection with the above designated Project for City.

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ARTICLE I. DEFINITIONS

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

- I.1 “**AGREEMENT**” is this written document signed by City and Consultant, including any other document itemized and expressly referenced in, or attached to, and expressly made part of this Agreement, to include Consultant’s proposal, to the extent accepted by City and not in conflict with the **ARTICLES** of this Agreement: Scope of Services – **EXHIBIT A**; Schedule of Project Services - **EXHIBIT B**; Additional Services - **EXHIBIT C**; SBEDA Subconsultant/Supplier Utilization Plan and SBEDA Ordinance Compliance and Provision - **EXHIBIT D**; General Conditions for City of San Antonio Construction Projects – **EXHIBIT E**; Form 1295 – **EXHIBIT F**; and any issued Addenda – **EXHIBIT G**.
- I.2 “**APPLICATION FOR PAYMENT**” is the electronic filing by the Construction Contractor requesting to be paid for completed Work and materials stored at site.
- I.3 “**CCMS**” is the City’s Contract Management System whereby payments made by Consultant to, and confirmed by Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and monitored by City for compliance.
- I.4 “**CERTIFICATE OF SUBSTANTIAL COMPLETION**” is the document issued by Consultant, with City’s consent, at the stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract, so City may occupy or utilize the Work for its intended use.
- I.5 “**CITY**” and “**OWNER**” mean the City of San Antonio, Texas.
- I.6 “**CLAIM**” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money and/or extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between City and Consultant arising out of, or relating to, this Agreement.
- I.7 “**COMPENSATION**” means the amount paid by City to Consultant for completed services accepted by City under this Agreement.
- I.8 “**CONSTRUCTION CONTRACTOR**” is the firm hired by City to construct the Project.
- I.9 “**CONSTRUCTION DRAWINGS AND SPECIFICATIONS**” are the documents used to convey the intent of Consultant for the purposes of constructing the Project.
- I.10 “**CONSTRUCTION DOCUMENTS,**” or “**CDS,**” are the complete set of Work documents acceptance by City to complete the Project, including the Construction Drawings and Specifications as set out in **ARTICLE III.1**.

- I.11** “CONSULTANT” is Lundy & Franke Engineering, Inc. and its officers, partners, employees, agents and representatives, all Sub-Consultants, if any, and all other persons or entities for which Consultant legally is responsible.
- I.12** “CONSULTANT’S SCHEDULE OF SERVICES” is a detailed listing of the services to be performed and the time sequence for the delivery, to include an estimated dollar value, which shall be attached for the payment of the services over the term of this Agreement.
- I.13** “DIRECTOR” means the Director, or designee, of City’s Transportation and Capital Improvements (hereafter referred to as “TCI”) Department, identified in the Notice to Proceed.
- I.14** “ESTIMATED COST OF WORK” means Consultant’s opinion of probable construction costs.
- I.15** “FINAL COMPENSATION” means the final amounts paid by City to Consultant for completed services accepted by City under this Agreement.
- I.16** “FINAL PAYMENT” means the final amounts paid by City to Construction Contractor for completed Work as designed pursuant to the CDs.
- I.17** “INVOICE” means written request for compensation from Consultant to City for services completed under this Agreement.
- I.18** “PRIMELINK” means City’s internet-based, project management software for approving Task Orders and Applications for Compensation.
- I.19** “PROJECT” means the capital improvement/construction development undertaking of City.
- I.20** “PROPOSAL” means the proposal of Services submitted by Consultant in response to City’s Request for Qualifications.
- I.21** “SAMSA” is the San Antonio Metropolitan Statistical Area or Relevant Marketplace, collectively comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.
- I.22** “SCHEDULE OF PROJECT SERVICES” is a schedule, submitted by the Consultant before the first Application for Payment, allocating dollar amounts to various portions of the Services, prepared in such form and supported by such data to substantiate its accuracy as City may require. This schedule, unless objected to by City, shall be used as the basis for reviewing Consultant’s Applications for Payment.
- I.23** “SCHEDULE OF VALUES” a schedule, submitted by the Construction Contractor before the first Application for Payment, allocating dollar amounts to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Consultant may require. This schedule, unless objected to by Consultant, shall be used as the basis for reviewing Contractor’s Applications for Payment.

- I.24** “**SCHEMATIC DESIGN DOCUMENT**” shall have the meaning as defined in **ARTICLE III.2.5** of this Agreement.
- I.25** “**SERVICES**” means the services performed by Consultant, as required by, and stated in, **ARTICLE III** and **ARTICLE IV** of this Agreement.
- I.26** “**STATEMENT OF RELEASE**” is a document received by the City from the Consultant to confirm that all services, pursuant to this Agreement, have been fulfilled to the best of our knowledge.
- I.27** “**TOTAL COMPENSATION**” means the not to exceed amount of this Agreement.
- I.28** “**WORK**” means the construction work performed by the Construction Contractor.

END OF ARTICLE I

ARTICLE II. CONSULTANT RESPONSIBILITIES

- II.1** Consultant shall hold periodic conferences with Director or his/her representatives through the end of the Project so Consultant has the full benefit of City's experience and knowledge of existing needs and facilities, and so the Project is consistent with City's current policies and standards. To assist Consultant in this coordination, within reason, City shall make available for Consultant's use in planning and designing the Project, all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and to this particular Project, at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant upon termination or completion of the Project or if instructed to do so by the Director.
- II.2** Consultant warrants Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Bexar County, Texas.
- II.3** Consultant shall be represented by a registered professional Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including, but not limited to, scope meetings, and review meetings.
- II.4** The Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Suite. 2-350, Austin, Texas 78701, (512) 305-9000 and/or Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723 has licensing jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.
- II.5** Consultant warrants it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of **ARTICLE XIII**.
- II.6** **INTERNET-BASED PROJECT MANAGEMENT SYSTEMS**

City shall administer its services through an Internet-Based Project Management System (hereafter referred to as "PRIMELink"). As such, Consultant shall conduct all electronic communication through PRIMELink and perform all Project-related functions utilizing this system, with the exception of Sub-Consultant payment monitoring activities to be conducted through CCMS. Communication includes correspondence, submittals, requests for information, vouchers, invoices and/or payment requests and processing, amendments, change orders and other administrative activities. City shall administer the PRIMELink software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

END OF ARTICLE II

ARTICLE III. BASIC SERVICES

III.1 BASIC SERVICES

- III.1.1** Consultant shall not commence performance of any Services on this Project until being thoroughly briefed on the scope of the Project and being notified by City, in writing, to proceed. The scope of the Project and Consultant's Services required shall be based on City's criteria and scope. Should the goals of the Project subsequently change, either Consultant or City may request a review of the anticipated Services, along with an appropriate adjustment in compensation.
- III.1.3** Consultant shall render the professional services described in this **ARTICLE III** necessary for the development of the Project to Substantial Completion.
- III.1.4** Consultant shall coordinate its services with those services provided by City. Consultant shall be entitled to rely on the completeness of services and information furnished by City, unless noted otherwise.
- III.1.5** Consultant shall manage Consultant's services, consult with City, research applicable design criteria, attend Project meetings, communicate with members of the Project Team and report progress to City. Additionally, Consultant shall prepare for and attend public hearings, presentations, council meetings or other official or public meeting concerning the Project, as requested by City.

END OF ARTICLE III

ARTICLE IV. ADDITIONAL SERVICES

Additional Services are not included in Basic Services but may be required for the delivery of the Project. All Additional Services, to include the cost thereof, shall be listed in **EXHIBIT C** hereto, and if such Additional Services are to be performed by Subcontractors or Sub-Consultants, then Consultant shall list such Subcontractors or Sub-Consultants, to include the legal names, addresses and telephone numbers. The cost of Additional Services shall be included in the not-to-exceed Total Compensation for this Contract.

END OF ARTICLE IV

ARTICLE V. FURTHER SERVICES REQUIRING AMENDMENT

- V.1** If, during the performance of the Project, further services are required of Consultant, Consultant shall notify City, in a timely manner, to explain the reasons for the further services. Any further services shall be negotiated, agreed upon and added to this Agreement by a written amendment executed by both parties hereto.
- V.2** Further services may be provided after the execution of this Agreement without nullifying the Agreement. If further services are required, to redraw or redesign as a result of City's decision to change, add, increase the scope or redirect the goals after drawings have been completed, and Consultant shall be charging City for these additional services, City shall negotiate per task an agreed-upon amount to complete the services. There shall be a written agreement between both City and Consultant to change the scope, including additional fees with back-up justification by Consultant. If compensation is negotiated for additional services, compensation shall be added to the contract amount and paid to Consultant after a written amendment incorporating such services into the Agreement has been executed by both parties and work is complete. If additional services are required due to incomplete design documents, the consultant will provide services without additional cost to City.

END OF ARTICLE V

ARTICLE VI. ESTIMATED COST OF WORK

- VI.1** The Estimated Cost of Work shall be the total estimated cost for the Project to construct all elements of the Project, designed or specified by Consultant, and must include and incorporate City's General Conditions for Construction Costs, overhead and profit, but not the Cost for Design, land or City's equipment. The format of the Estimated Cost of Work shall follow the divisions of the specifications and show contingency, general conditions, insurance and bond costs and profit and overhead through the Project's end.
- VI.2** City's budget for the Estimated Cost of Work is provided in this Agreement and may be adjusted throughout the Project, as agreed upon by City. It is the responsibility of Consultant to professionally evaluate City's budget and recommend scope changes which may be required to meet City's budget. If Consultant's consideration of City's budget is not challenged during the schematic phase of design, it is understood that City's Project budget is approved by Consultant to be adequate, in Consultant's professional opinion, to cover financial requirements of the Estimated Cost of Work.
- VI.3** Since Consultant has no control over Construction Contractor's cost of labor, materials and equipment, Construction Contractor's methods of determining prices, competitive bidding or market conditions, Consultant's opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a design professional familiar with the construction industry. Consultant cannot and does not guarantee proposals, bids or the construction cost will remain within the Estimated Cost of Work prepared by Consultant.
- VI.4** Consultant shall be permitted to include in the Estimated Cost of Work contingencies for price escalation early in the Project and to identify design elements and systems which shall deliver the Project within City's budget. If, at the end of each phase of Work, Consultant's Estimated Cost of Work is higher than City's budget, Consultant shall, at its own cost, revise the documents to bring them into budget, unless a written agreement from City approves a budget change.

END OF ARTICLE VI

ARTICLE VII.

THIS SECTION HAS BEEN RESERVED

END OF ARTICLE VII

ARTICLE VIII. SEQUENCE OF SERVICE

VIII.1 Prior to commencement of any Services, Consultant shall provide City with:

VIII.1.1 All costs necessary to complete the scope of work, including but not limited to reimbursable costs and subconsultants costs, and

VIII.1.2 A SCHEDULE OF PROJECT SERVICES, listed in **EXHIBIT B** hereto, which shall detail the various service phases, as described in **ARTICLE III** and **ARTICLE IV** herein, with the expected time frame for delivery and shall delineate all services to be performed during each phase, by Consultant and all Subconsultants required for the completion of each phase, and the Additional Services and Reimbursables, if any, for each phase.

VIII.2 Consultant shall perform and complete its obligations for the Services as stated in **ARTICLE III “BASIC SERVICES”** and **ARTICLE IV “ADDITIONAL SERVICES”** of this Agreement in a prompt and continuous manner, so as not to delay the development of the design and CDs and so as not to delay the Construction of the Project in accordance with the schedules approved by City. If, upon review of any phase of Services, City determines corrections, modifications, alterations or additions are required by Consultant, Consultant shall complete these corrections, modifications, alterations or additions before that Phase of Services is approved by City.

VIII.3 Consultant shall not proceed with the next appropriate Phase of Service without written authorization from City. City may, at any time, elect to discontinue Consultant’s Services for any reason. However, if circumstance dictates, City may make adjustments to the scope of Consultant’s obligations at any time to achieve the required design.

VIII.4 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant’s reasonable control. Within ten (10) calendar days from the occurrence of any event, for which time for performance by Consultant shall significantly be extended under this provision, Consultant shall give written notice thereof to City, stating the reason for such extension and the actual or estimated time thereof. If City determines Consultant is responsible for the need for extended time City shall have the right to make a Claim, as provided in this Agreement.

END OF ARTICLE VIII

ARTICLE IX. INSURANCE REQUIREMENTS

- IX.1** Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "Tower of Americas Condition Assessment" **Project** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent, accompanied by an affidavit also signed by Consultant, attesting the furnished Certificate(s) represent Consultant's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- IX.2** City reserves the right to review the insurance requirements of this **ARTICLE IX** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and 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 shall City allow modification whereby City may incur increased risk.
- IX.3** Consultant's financial integrity is of interest to City; therefore, subject to Consultant's obligation to maintain reasonable deductibles in such amounts as are approved by Consultant's insurance companies, 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. These listed insurance limits are standard limits for all City projects. If a project does not justify these standard limits of insurance coverages, Consultant may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

TABLE WILL FOLLOW

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of: \$1,000,000.00 per occurrence; \$2,000,000.00 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	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000.00 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Umbrella or Excess Liability Coverage	\$3,000,000.00 per occurrence combined limit <u>Bodily Injury</u> (including death) and <u>Property Damage</u> .
7. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
*if applicable	

***Consultant accepts and agrees these insurance types and amounts only may be amended by the City of San Antonio Risk Management Division**

City may request, and without expense to City, to inspect copies of Consultant's policies and endorsements as they apply to the limits and forms required by City.

- IX.4** Consultant agrees to require, by written contract, all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same insurance coverage required of Consultant herein, and provide to Consultant a certificate of insurance and endorsement naming Consultant and City as additional insureds. Consultant shall maintain said certificate and endorsement prior to the commencement of any work by any Sub-Consultant and/or Subcontractor and through the period referenced in **ARTICLE IX**. 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.
- IX.5** If City requests copy/copies of an insurance policy, Consultant promptly shall comply and Consultant shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Consultant's policy, City shall submit the received request, along with Consultant's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Consultant's policy information. Consultant and City agree City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City shall provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant's information.
- IX.6** Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:
- IX.6.1** Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- IX.6.2** Provide for an endorsement the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;
- IX.6.3** Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and

- IX.6.4** Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.
- IX.7** Within ten (10) calendar days of notice to Consultant of a cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance, should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- IX.8** In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder until Consultant demonstrates compliance with the requirements hereof.
- IX.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 Sub-Consultants' and/or Subcontractors' performance of the work covered under this Agreement.
- IX.10** It is agreed 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.
- IX.11** It is understood and agreed the insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- IX.12** Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

END OF ARTICLE IX

ARTICLE X. CITY RESPONSIBILITIES

X.1 The Director shall act on behalf of City with respect to the Services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions with respect to materials, equipment, elements and systems pertinent to Consultant's services.

X.1.1 City shall give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in Consultant's Services, in the Work of Construction Contractor or any development which affects the scope or timing of Consultant's Services.

X.1.2 City reserves the right to contract directly for the services of the geotechnical engineers, surveyors, material testing and special testing of materials, as allowed by code and Contract Documents. In some instances, however, City may request these listed services to be managed by Consultant as an Additional Service. Unless stipulated otherwise, environmental and hazardous waste testing shall be contracted by City.

END OF ARTICLE X

ARTICLE XI. COMPENSATION

- XI.1** The Total Compensation for all services defined by this Agreement, to include Basic Services, Additional Services and Reimbursables, is the not-to-exceed amount of **THREE HUNDRED THIRTY-ONE THOUSAND AND NO/100 DOLLARS (\$331,000.00)**. It is agreed and understood such amount shall constitute full compensation to Consultant for all Basic Services, Additional Services and Reimbursables listed on Consultant's Scope of Services on **EXHIBIT A** hereto, and shall meet all requirements of City's Facility Design Guidelines and Standards. Such amount must be approved and appropriated by the San Antonio City Council for expenditure under this Agreement. Unless and until City further makes appropriations for any additional services, not already included in this Agreement, the obligation of City to Consultant for Total Compensation in connection with this Agreement cannot and shall not exceed **THREE HUNDRED THIRTY-ONE THOUSAND AND NO/100 DOLLARS (\$331,000.00)** without further amendment to this Agreement.
- XI.2** Consultant's Schedule of Project Services, as found in **EXHIBIT B** hereto, shall be used as the basis for reviewing Consultant's Invoices. The Schedule shall include all services to be performed for the Project and also shall include Additional Services and Reimbursables which make up the Total Compensation.

Services (in dollars) in **EXHIBIT B** shall be divided into the following categories, as described in **ARTICLE III** and **ARTICLE IV** herein, based on the given percentages.

COMPLETION OF SITE OBSERVATIONS (45%)
PRELIMINARY REPORTS (15%)
FINAL REPORT (20%)
PUBLIC MEETINGS (5%)
CLOSEOUT (5%)

- XI.2.1** Before the first invoice or pay request, City shall receive from Consultant a Schedule of Project Services, along with the expected time frame for delivery based on the Design Phases, prepared in such form and supported by such data to substantiate its accuracy as City may require. This Consultant's Schedule of Project Services shall be used as the basis for reviewing Consultant's Invoice or pay request, during each phase of the Services.
- XI.2.2** Consultant and City acknowledge the total not-to-exceed Compensation amount contained in **ARTICLE XI.1** herein has been established predicated upon the not-to-exceed costs of all Services to be rendered under this Agreement.
- XI.2.3** All pay requests shall be submitted electronically through City's Program Management Portal (hereafter referred to as "PRIMELink"), as referenced in **ARTICLE II.10**.

XI.2.4 Any changes shall be processed and approved as change orders through PRIMELink.

XI.3 Consultant warrants title to all Services covered by its Invoices shall pass to City no later than the time of Compensation. Consultant further warrants, upon submittal of an Invoice, all Services for which Invoices previously have been issued and compensation received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrance in favor of Consultant, or other persons or entities making a Claim by reason of having provided labor or services relating to the Work. Consultant shall indemnify and hold City harmless from any liens, claims, security interest or encumbrances filed by anyone claiming by through or under the items covered by compensation paid by City to Consultant.

XI.4 Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants or vendors in connection with the Project and shall provide City with evidence of such payment through City's electronic City of San Antonio Contract Management System (hereafter referred to as "CCMS"). Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid Sub-Consultant(s) or vendors for their services or products. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on Sub-Consultants and vendors as are applicable to Consultant hereunder, and require Sub-Consultants to provide confirmation to City of receipt of payments through CCMS and, if City so requests, shall provide copies of such payments to the Sub-Consultants and/or vendors.

XI.5 The final compensation to be made by City to Consultant shall be payable upon completion of all services and submission of a Statement of Release, with the final Invoice notifying City there is no further compensation owed to Consultant by City beyond the final Invoice.

XI.6 City may withhold compensation to such extent as may be necessary, in City's sole opinion, to protect City from damage or loss for which Consultant is responsible, because of:

XI.6.1 Delays in the performance of Consultant's Services;

XI.6.2 Third party Claims filed or reasonable evidence indicating a probable filing of such Claims, unless security acceptable to City is provided by Consultant;

XI.6.3 Failure of Consultant to make payments properly to Sub-Consultants or vendors for labor, materials or equipment;

XI.6.4 Reasonable evidence that Consultant's Services cannot be completed for the amount unpaid under this Agreement.

XI.6.5 Damage to City or Construction Contractor; and/or

XI.6.6 Persistent failure by Consultant to carry out the performance of its Services in accordance with this Agreement.

XI.7 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within a reasonable time. City shall not be deemed in default by reason of withholding Compensation, as provided for in this **ARTICLE XI**.

XI.8 In the event of any dispute between the parties regarding the amount of compensation for any Phase or as final Compensation, or regarding any amount withheld by City, Consultant shall be required to make a Claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for resolution of such dispute. In the event Consultant does not initiate and follow the Claims procedures provided in this Agreement, in a timely manner and as required by the terms, as cited in **ARTICLE XV**, any such rights shall be deemed to have been waived.

XI.9 Consultant agrees to allow Owner and/or Owner's designee access to all of the Consultant's Records, Consultant's facilities and current or former employee of Consultant, deemed necessary by Owner or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary for Owner or its designees to conduct such audit, inspections or examinations.

XI.10 REIMBURSABLE EXPENSES

City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses not agreed upon and accepted in writing by City prior to the execution of the Services. If Consultant, Sub-Consultant or vendor of Consultant should make an expenditure which, prior to its occurrence, had not been approved in writing by City, either prior to or after the execution of this Agreement, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

XI.10.1 Travel outside SAMSA only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under this Agreement. Travel costs are limited to the rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed the amount noted in attached **EXHIBIT A** Scope of Services without further approval of City. City shall not pay for Consultant's travel and parking within SAMSA.

XI.10.2 Mailing, courier services and copies of documents requested in writing by City in excess of the copies which are to be provided under the Agreement. These costs shall not exceed the amount noted in attached Scope of Services without further approval of City.

XI.10.3 Graphics, physical models and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope of Services without further approval of City.

XI.10.4 City shall not allow a markup on any of the above reimbursable items and only shall reimburse actual costs incurred with City's written approval.

END OF ARTICLE XI

ARTICLE XII. OWNERSHIP OF DOCUMENTS

- XII.1** All previously owned documents not relating to this Project, including any original drawings, estimates, specifications and all other documents and data of Consultant, shall remain the property of Consultant as instruments of service. However, Consultant understands and agrees City shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates, specifications and all other documents and data. Any reuse of any documents and data by City without the specific written verification or adaptation by Consultant shall be at City's sole risk and without liability or legal exposure to Consultant.
- XII.2** Consultant acknowledges and agrees, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Project and Agreement and shall be used as City desires. All documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City upon request or termination or completion of this Agreement without restriction on future use. However, any reuse of documents on a different Project, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.
- XII.3** Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the written consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City.
- XII.4** CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS AGREEMENT TO CITY, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY PRIOR-OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST CITY, INsofar AS THE SAME ARE BASED ON ANY CLAIM MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER

INTELLECTUAL PROPERTY RIGHTS.

- XII.5** Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by City or other Consultants and/or engineers and/or other persons, subsequent to the completion of the Project. Consultant shall note Consultant's agreement or disagreement with all changes or modifications on all drawings, specifications and other documents by other Consultants and/or engineers or other persons outside of Consultant's control, including electronic copies, prior to the completion of the Project.
- XII.6** Copies of documents which may be relied upon by City are limited to the printed copies (also known as hard copies), PDF electronic versions and the editable format of development, which are sealed and signed by Consultant. Files in editable electronic media format of text, data, graphics or other types, which are furnished by Consultant to City only are for convenience of City or a utility. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. However, any reuse without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.
- XII.7** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant and/or its suppliers.

END OF ARTICLE XII

ARTICLE XIII. TERMINATION AND/OR SUSPENSION OF WORK

XIII.1 RIGHT OF EITHER PARTY TO TERMINATE FOR DEFAULT

XIII.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure, as provided in this **ARTICLE XIII.**

XIII.1.2 The party not in default must issue a signed, written Notice of Termination, to the other party, declaring the other party to be in default and stating the reason(s) why it is in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) calendar days to cure any failure to perform under this Agreement. Upon the completion of such 10-day calendar period, commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

XIII.2 City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a written and signed Notice of Termination, which shall take effect on the twentieth (20th) calendar day following receipt of said Notice and upon the scheduled completion date of the performance phase in which Consultant then currently is working, whichever effective termination date occurs first.

XIII.3 City reserves the right to suspend this Agreement for the convenience of City by issuing a written and signed Notice of Suspension, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way guarantee the total number of calendar days of suspension which may occur. Such suspension shall take effect immediately upon Consultant's receipt of said Notice of Suspension or as stated in the notification.

XIII.4 Consultant hereby is given the right to terminate this Agreement in the event a suspension extends for a period in excess of one hundred and twenty (120) consecutive calendar days. Consultant may exercise its right to terminate by issuing a written and signed Notice of Termination, to City after the expiration of one hundred and twenty (120) consecutive calendar days from the effective date of the suspension. Termination, shall become effective immediately upon City's receipt of said written and signed Notice of Termination from Consultant.

XIII.5 The procedures which Consultant shall follow, upon Receipt of Notice of Termination, are:

XIII.5.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise so directs or Consultant immediately takes action to cure a failure to perform under the cure period set out herein,

Consultant immediately shall begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and promptly shall proceed to cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) calendar days after receipt of such notice of termination, unless Consultant successfully has cured a failure to perform, Consultant shall submit a statement to City showing, in detail, the services performed under this Agreement prior to the effective date of termination. City shall have the option to grant an extension to the time period allowable for the submittal of such statement.

XIII.5.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits, prepared under this Agreement prior to the effective date of termination, shall be delivered to City, in the form requested by City, as a pre-condition to the payment of final Compensation.

XIII.5.3 Upon the above conditions being met, City promptly shall compensate Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previously paid Compensation.

XIII.5.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of City. To that end, Consultant further acknowledges the failure of Consultant to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Consultant of any and all rights or Claims to compensation for services performed under this Agreement and for which Consultant otherwise may be entitled for services performed under this Agreement.

XIII.6 The procedures Consultant is to follow, upon Receipt of Notice of Suspension, are:

XIII.6.1 Upon receipt of written Notice of Suspension, which date also shall be the effective date of the suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and promptly shall proceed to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.

XIII.6.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

XIII.6.3 Copies of all completed or partially completed designs, plans and specifications and models, prepared under this Agreement prior to the effective date of suspension, shall be prepared for possible delivery to City but shall be retained by Consultant until such time as City may exercise the right to terminate this Agreement.

XIII.6.4 In the event Consultant elects to exercise its right to terminate one hundred twenty (120) calendar days after the effective suspension date, within thirty (30) calendar days after receipt by City of Consultant's Notice of Termination, Consultant promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing in detail the services performed under this Agreement, prior to the effective date of suspension.

XIII.6.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.

XIII.6.6 Upon the above conditions being met, City promptly shall compensate Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previously paid Compensation.

XIII.6.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of City. To that end, Consultant further acknowledges the failure of Consultant to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Consultant of any and all rights or Claims to compensation for services performed under this Agreement and for which Consultant otherwise may be entitled for services performed under this Agreement.

END OF ARTICLE XIII

ARTICLE XIV. INDEMNIFICATION

XIV.1 CONSULTANT FULLY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER REFERRED TO AS "INDEMNITEE" OR "INDEMNITEES" FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEE AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

XIV.2 The provisions of this **ARTICLE XIV** solely are 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 City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

END OF ARTICLE XIV

ARTICLE XV. CLAIMS AND DISPUTES

XV.1 Claims must be initiated by written notice to the other party. Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his/her signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

XV.2 TIME LIMIT ON CLAIMS

Claims by Consultant or by City must be initiated within twenty one (21) calendar days after occurrence of the event giving rise to such Claim. Claims by Consultant shall be initiated by written notice to City. Claims by City shall be initiated by written notice to Consultant.

XV.3 CONTINUING CONTRACT PERFORMANCE

Pending the final resolution of a Claim, except as otherwise agreed in writing, Consultant shall proceed diligently with performance of this Agreement and City shall continue to make payments in accordance with this Agreement.

XV.4 CLAIMS FOR ADDITIONAL TIME.

If Consultant wishes to make a Claim for an increase in the time for performance, written notice, as provided in this **ARTICLE XV**, shall be given. Consultant's Claim shall include an estimate of probable effect(s) of a delay on the progress of the Work. In the case of a continuing delay only one Claim is necessary.

XV.5 CLAIMS FOR CONSEQUENTIAL DAMAGES

Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply to Claims by either Consultant or City:

XV.5.1 No consequential damages shall be allowed;

XV.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible; and

XV.5.3 No profit shall be allowed on any damage Claim by Consultant.

XV.6 NO WAIVER OF GOVERNMENTAL IMMUNITY

Nothing in this **ARTICLE XV** shall be construed to waive City's Governmental Immunity from a lawsuit. Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.

XV.7 ALTERNATIVE DISPUTE RESOLUTION

XV.7.1 CONTINUATION OF SERVICES PENDING DISPUTE RESOLUTION

Each party is required to continue to perform its obligations under this Agreement, pending final resolution of any dispute arising out of, or relating to, this Agreement, less it would be impossible or impracticable under the circumstances.

XV.7.2 REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS

Before invoking mediation, or any other alternative dispute process set forth herein, the Parties hereto agree they first shall try to resolve a dispute arising out of, or related to, this Agreement through discussions directly between senior management representatives within their respective organizations who have overall managerial responsibility for this or similar Projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days, or agreed upon time frame between the parties, after a Party delivers a written notice of such dispute, then the Parties shall proceed with mediation alternative dispute resolution process contained herein.

XV.7.3 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for the purposes of applicable rules of evidence.

XV.8 MEDIATION

XV.8.1 In the event City or Consultant shall contend the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

XV.8.2 Request for mediation shall be in writing and shall request the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon the written agreement of both parties.

XV.8.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days, following the date of the request for mediation, all conditions precedent in this

ARTICLE XV shall be deemed to have occurred.

XV.8.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

END OF ARTICLE XV

ARTICLE XVI. NON-DISCRIMINATION POLICY

XVI.1 NON-DISCRIMINATION

As a party to a contract with City, Consultant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, **ARTICLE X** of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consultant represents and warrants it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and shall continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges it understands and agrees 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 Consultant from participating in City contracts or other sanctions. This **ARTICLE XVI.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with this *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

XVI.2 SUB-CONSULTANTS

Upon execution of this Agreement by Consultant, Consultant shall provide to City a detailed outreach and diversity plan for approval by City, including a list of Sub-Consultants and shall require all of its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through the San Antonio Internet-Bases Project Management System. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any Sub-Consultants from this Project.

END OF ARTICLE XVI

ARTICLE XVII. ASSIGNMENT OR TRANSFER OF INTEREST

Consultant shall not assign or transfer Consultant's interest in this Agreement without the written consent of City.

END OF ARTICLE XVII

ARTICLE XVIII. SEVERABILITY

If for any reason, any one or more **ARTICLE(s)** of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining **ARTICLE(s)** of this Agreement but shall be confined in its effect to the specific **ARTICLE**, sentence(s), clause(s) or part(s) of this Agreement held invalid or unenforceable. The invalidity or unenforceability of any **ARTICLE(s)**, sentence, clause or part(s) of this Agreement in any one or more instance shall not affect or prejudice in any way the validity of this Agreement in any other instance.

END OF ARTICLE XVIII

ARTICLE IX. INTEREST IN CITY CONTRACTS PROHIBITED

- IX.1** Consultant acknowledges no officer or employee of its firm shall have a financial interest, directly or indirectly, in any contract with City, or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.
- IX.2** Consultant acknowledges it is informed the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: (1) a City officer or employee; his parent, child or spouse; (2) a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; and/or (3) a business entity in which any individual or entity above listed is a Sub-Consultant on a City contract, a partner or a parent or subsidiary business entity.
- IX.3** Consultant warrants and certifies, and this Agreement is made in reliance thereon, it, its officers, employees and agents neither are officers nor employees of City. Consultant further warrants and certifies it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

END OF ARTICLE IX

ARTICLE XX. TEXAS GOVERNMENT CODE §2270.002

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

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

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

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

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If affirmation is found to be false, City may terminate the contract for

END OF ARTICLE XX. TEXAS GOVERNMENT CODE §2270.002

ARTICLE XXI. CONFLICTS OF INTEREST DISCLOSURE

XXI.1 Consultant shall disclose if it is associated in any manner with a City Official or employee in a business venture or business dealings. Failure to do so shall constitute a violation of City's Ethics Code. To be "associated" in a business venture or business dealings includes:

XXI.1.2 Being in a partnership or joint venture with the officer or employee;

XXI.1.3 Having a contract with the officer or employee;

XXI.1.4 Being joint owners of a business; or

XXI.1.5 Owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%), or having an established business relationship as client or customer.

END OF ARTICLE XXI

ARTICLE XXII. RIGHT OF REVIEW AND AUDIT

XXII.1 Consultant grants City or its designees the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Services under this Agreement during the term of this Agreement and during the retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years, following the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data, of every kind and character, generated as a result of the Services under this Agreement. Example of Consultant records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings, for any issue in question, and any and all other agreements, sources of information and matters which may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

XXII.2 City agrees it shall exercise the right to audit, examine or inspect only during regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, facilities and current or former employees of Consultant deemed necessary by City or its designee(s) to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate workspace necessary to City or its designees to conduct such audits, inspections or examinations.

XXII.3 Consultant shall include this audit clause in any Sub-Consultant, Sub-Consultant, and supplier or vendor contract.

END OF ARTICLE XXII

ARTICLE XXIII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement only may be amended by written instrument signed by both City and Consultant.

END OF ARTICLE XXIII

ARTICLE XXIV. VENUE

The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

END OF ARTICLE XXIV

ARTICLE XXV. NOTICES

Except as may be provided elsewhere herein, all notices, communications and reports, required or permitted under this Contract, shall personally be delivered or mailed to the respective party by depositing the same in the United States Postal Service, addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) calendar days of mailing.

If intended for City, to:

**City of San Antonio
Attention: TCI Contract Services
114 West Commerce, 9th
Floor P.O. Box 839966
San Antonio, Texas 78283-3966**

If intended for Consultant, to:

**Lundy & Franke Engineering, Inc.
549 Heimer
San Antonio, Texas 78232**

With a copy to:

**City of San Antonio
TCI
Attention: City Architect's Office
114 West Commerce, 4th Floor, Room 412
P.O. Box 839966
San Antonio, Texas 78283-3966**

END OF ARTICLE XXV

ARTICLE XXVI. INDEPENDENT CONTRACTOR

By the execution of this Agreement, Consultant and City do not change the independent contractor status of Consultant. Consultant shall exercise independent judgment in performing its duties and obligations under this Agreement and solely is responsible for setting working hours, scheduling and/or prioritizing the workflow and determining how the Services are to be performed subject only to the Contract requirements. No term or provision of this Agreement, or act of Consultant in the performance of this Agreement, shall be construed as making Consultant the agent, servant or employee of City or as making Consultant, or any of its agents or employees, eligible for any fringe benefits, such as retirement, insurance and/or Worker's compensation, which City provides to or for its employees.

END OF ARTICLE XXVI

ARTICLE XXVII. CAPTIONS

The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

END OF ARTICLE XXVII

ARTICLE XXVIII. ATTORNEY FEES

The Parties expressly agree, in the event of litigation, both parties waive rights to payment of attorneys' fees that otherwise might be recoverable pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

END OF ARTICLE XXVIII.

ARTICLE XXIX. CONFLICT RESOLUTION BETWEEN DOCUMENTS


Consultant hereby agrees and acknowledges if anything contained in Consultant's prepared Scope of Services, attached hereto and labeled as **EXHIBIT A**, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement and/or with City's General Conditions for City of San Antonio Construction Contracts, attached hereto and labeled as **EXHIBIT E**, this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

IN WITNESS WHEREOF, the City of San Antonio lawfully has caused these present to execute this Agreement by the hand of City Manager or his/her designee; Consultant, acting by the hand of Shawn J. Franke thereunto authorized VICE PRESIDENT (TITLE) does now sign, execute and deliver this document.

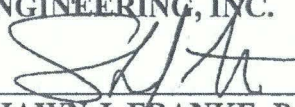
Executed by City and effective on this ____ day of _____, 20____,

CITY OF SAN ANTONIO

PETER ZANONI
DEPUTY CITY MANAGER



LUNDY & FRANKE
ENGINEERING, INC.



SHAWN J. FRANKE, P. E.
VICE PRESIDENT

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

SCOPE OF SERVICES

See Attached Proposal Dated 3-7-2019 (REVISED 3-25-2019)

Consultant hereby agrees and acknowledges if anything contained in this Consultant prepared Exhibit A, Consultant's Scope of Services, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement shall take precedence and control to resolve said conflict.



March 7, 2019

Transportation & Capital Improvements
P.O. Box 839966
San Antonio, TX 78283-3966

Attn: Ms. Cynthia Martinez | Special Projects Manager

Re: Tower of Americas condition Assessment (Revised 3-25-2019)

Referencing our recent conversation, we are pleased to submit the following proposal for furnishing specified structural engineering services consisting of a structural, mechanical and limited architectural investigation of the above referenced building.

The following is our scope of services for the assessment:

- Fire Alarm Testing
 - Drawing Review
 - Visual Survey
 - Code Review
 - Two Day Test of System
 - Report and Opinion of Probable Cost
- Building Enclosure
 - Drawing Review
 - Visual Survey of Top House
 - Refer to attached Scope Sketch for Access Points
 - Limited Drone Flights
 - Report and Opinion of Probable Cost
 - The standing seam metal roof has been excluded from this report.
- Concrete Shaft
 - Drawing Review
 - Visual Survey
 - Ride on top of Elevators for hands on observations
 - Limited Drone Flights to observe non-accessible legs.
 - CoSA to provide operator for elevator rides, two days.
 - 3 to 6 cores will be taken of concrete shaft from on top of elevator
 - Hands on examination, rope or chair access for the legs not visible from elevator top.

549 Heimer Road, San Antonio Texas 78232 - (210) 979-7900

Texas Board of Registration Firm Registration #3388

Tower of Americas condition Assessment

4/23/2019

Page 2 of 4

- Petrographic Exam of Concrete
 - Visual observation of elevator rails.
 - Evaluation of elevator system is not included in this report.
- Mechanical
 - Observe HVAC Systems and Ductwork
 - Fans
 - Controls
 - Piping and Pumps
- Electrical
 - Electrical Power Distribution including power from ground floor to top house.
 - Lighting, interior
 - Generators
 - Infrared testing of selected switchgear both at lower level and above.
 - Lighting Exterior, Top house and shaft illumination
- Plumbing
 - Plumbing fixtures
 - Water/sewer lines
 - Roof Drains
 - Water booster system

DELIVERABLES

The following will be provided to CoSA as a result of the above assessment:

- Prepare report to describe findings/assessments, recommend specific repair/improvements, prioritize recommended repair/improvements, and provide accurate cost estimates for each recommended repair/improvement.
- Submit draft report to City of San Antonio.
- Meet with City staff to discuss draft report, its findings, and recommendations.
- Present Power Point type briefing at public meeting to summarize report.
- Submit 5 printed copies of Power Point type briefing to City of San Antonio.
- Submit final report (5 printed reports and 1 pdf digital report) to City of San Antonio.

Fee

To perform these inspections and prepare the written report we propose fee of **\$330,594.32**.

Mutually acknowledged changes in the scope of our services including services beyond the completion of the report will be negotiated or can be performed at the rates shown herein.

We sincerely appreciate this opportunity to offer our services and look forward to working with you. If the above is agreeable to you, please sign and return one copy to us for our records. The commencement of performance under this proposal, indicates an acceptance by the Client to the terms mentioned-above. If there are any questions, please advise us.

Sincerely,

LUNDY & FRANKE
ENGINEERING, INC.



Shawn J. Franke, P.E. SECB
SJF/sjf

Accepted By: _____

Its: _____

EXHIBIT B

**CONSULTANT'S HOURLY RATE
(TO INCLUDE REIMBURSEABLES, IF ANY)**



**City of San Antonio
Transportation and Capital Improvements**

Fee/Price Proposal Breakdown for Professional Services

Project Name:	Tower of Americas Condition Assessment
Name of Firm/Subconsultant:	Lundy & Franke Engineering, Inc.
Date Proposal Submitted:	2/5/2019
Project Manager:	Cynthia Martinez

Consultant	Fee Total from Attached Sheets	Hours
Lundy & Franke Engineering, Inc.	\$96,195.00	548
Ford Powell Carson	\$7,520.32	42
Fire Protection Consulting Group	\$0.00	0
WJE	\$147,015.00	542
Alderson Associates	\$79,864.00	608.00
Texas Resue	\$0.00	0
Pugh Construction	\$0.00	0
Total Fee Proposal (Not to Exceed):		\$330,594.32 1,740.00

Fee/Price Proposal Breakdown for Professional Services

Project Name:	Tower of Americas Condition Assessment
Name of Firm/Subconsultant:	Lundy & Franke Engineering, Inc.
Date Proposal Submitted:	2/5/2019
Project Manager:	Cynthia Martinez

Position/Personnel Title	Principal/Partner	Project Manager	Ast. Project Manager	Senior Architect	Design Architect	Project Engineer	CADD	Tech	Admin/Clerical	Insert other position as needed	Insert other position as needed
Fully-Loaded Hourly Wage Rates * (as defined below)	\$215.00	\$175.00	\$150.00			\$150.00	\$95.00	\$95.00	\$65.00		
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours		Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total Hours
Meetings and Consultant Coordination	38	15									53
Exterior Concrete Shaft Assessment	60	30				15					105
Interior Concrete Shaft Assessment	25	30				15					70
Coordination with Drone Fly and Review Footage	25	40				10					75
Reports and Findings	15	40				10	25	15			105
Antenna Assessment	15	10				5					30
Final Report and Presentations	40	15				10	25	20			110
											0
											0
											0
											0
											0
											0
											0
											0
Total Hours:	218	180		0	0	65	50	35	0	0	548
Total Fee Proposal (Not to Exceed):	\$46,870.00	\$31,500.00		\$0.00	\$0.00	\$9,750.00	\$4,750.00	\$3,325.00	\$0.00	\$0.00	\$96,195.00

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).

City of San Antonio
Transportation and Capital Improvements

Fee/Price Proposal Breakdown for Professional Services

Project Name:	Tower of America
Name of Firm/Subconsultant:	Alderson & Associates, Inc.
Date Proposal Submitted:	2/5/2019
Project Manager:	Cynthia Martinez

Position/Personnel Title	Principal/Partner	Project Manager	Senior Engineer	Design Engineer	Graduate Engineer	Senior Technician	CADD Technician	Clerical			
Fully-Loaded Hourly Wage Rates * (as defined below)	\$198.00	\$168.00	\$150.00	\$120.00	\$100.00	\$85.00	\$70.00	\$50.00	\$0.00	\$0.00	
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total Hours
General Project Administration											0.0
Meetings	10	10	20	20				38			98.0
Mechanical Surveys	2	30	30	30			8				100.0
Electrical Surveys	2	30	30	30			8				100.0
Plumbign Surveys	2	20	20	20			6				68.0
Report											0.0
Ananlysis	10	60	60					40			170.0
Cost Estimation	2	10	30					30			72.0
											0.0
Printing & Delivery Fees =											
Total Hours:	28.00	160.00	190.00	100.00	0.00	0.00	22.00	108.00	0.00	0.00	608.00
Total Fee Proposal (Not to Exceed):	\$5,544.00	\$26,880.00	\$28,500.00	\$12,000.00	\$0.00	\$0.00	\$1,540.00	\$5,400.00	\$0.00	\$0.00	\$79,864.00

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).

Fee/Price Proposal Breakdown for Professional Services

Project Name:	Tower of Americas Condition Assessment
Name of Firm/Subconsultant:	Wiss, Janney, Elstner Associates, Inc.
Date Proposal Submitted:	5-Feb-19
Project Manager:	Cynthia Martinez

Position/Personnel Title	Principal	Associate Principal	Senior Associate	Senior Associate	Associate III	Associate II	Senior Technician	Senior Technician	Admin/Clerical	Senior Specialist	Specialist
Fully-Loaded Hourly Wage Rates * (as defined below)	\$290.00	\$235.00	\$205.00	\$205.00	\$185.00	\$160.00	\$115.00	\$115.00	\$65.00	\$150.00	\$135.00
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Total Hours
Fire Protection / Building Code Assessment		20	137			3	4				164
Building Enclosure Assessment	2	11	105		1	46	12				176
Specialty Structural and Laboratory Analysis	6	6	121		32	33	4				202
											0
											0
											0
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											0
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											0
											0
											0
Total Hours:	8	37	363	0	32	82	20	0	0	0	542
Testing and Expenses											\$40,245.00
Total Fee Proposal (Not to Exceed):	\$2,320.00	\$8,695.00	\$74,415.00	\$0.00	\$5,920.00	\$13,120.00	\$2,300.00	\$0.00	\$0.00	\$0.00	\$147,015.00

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).

Fee/Price Proposal Breakdown for Professional Services

Project Name:	Tower of Americas Condition Assessment
Name of Firm/Subconsultant:	Ford Powell Carson
Date Proposal Submitted:	2/5/2019
Project Manager:	Cynthia Martinez

[illegible]

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).

EXHIBIT C

**SUBCONSULTANT/SUPPLIER UTILIZATION PLAN AND SBEDA ORDINANCE
COMPLIANCE PROVISIONS**



CITY OF SAN ANTONIO SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SOLICITATION NAME: ***Tower of Americas Assessment***

PRIME CONTRACTOR NAME: Lundy & Franke Engineering, Inc.

Please review the following information before completing the form:

1. **NO API HAS BEEN APPLIED TO THE SOLICITATION.**
2. Prime contractor must list ALL certified and non-certified Subcontractors/Suppliers that will be utilized for the entire contract period.
3. To be SBEDA eligible, a Prime contractor or Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency (www.SCTRCA.org) AND must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area.

For further clarification, please contact Small Business Office at (210) 207-3922 or refer to the SBEDA language within the solicitation document(s).

ROLE	NAME OF FIRM	SBEDA ELIGIBLE (YES/NO)	DOLLAR AMOUNT BY FIRM	% OF TOTAL CONTRACT VALUE BY FIRM	WORK TO BE PERFORMED (5 DIGIT NIGP CODE)
PRIME CONTRACTOR	Lundy & Franke Engineering, Inc.	Yes	\$0.00	35	92533
SUB	Alderson & Associates, Inc.	Yes	\$0.00	25	92533
SUB	WJE	No	\$0.00	25	92533
SUB	Ford Powell Carson	No	\$0.00	10	90607
SUB	Pugh Constructors, Inc.	Yes	\$0.00	3	90775
SUB	Texas Rescue	No	\$0.00	2	90775

I hereby affirm that the information on this form is true and complete to the best of my knowledge and belief. I possess internal documentation from all proposed Subcontractors/Suppliers confirming their intent to perform the scope of work for the price or percentage indicated. I understand and agree that if approved, this document shall be attached thereto and become a binding part of the contract.

Prime Contractor's Authorized Agent:

Sign and Date

Shawn Franke Digitally signed by Shawn Franke
Date: 2019.01.07 10:38:32 -06'00'

Name

Shawn J. Franke, P.E.

Title

Vice President

Director or Designee of Economic
Development:

Sign and Date

☐ APPROVED

☐ DENIED

Version: 7/15/16 pg.1

**SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) PROGRAM
Tower of Americas Assessment
Exhibit C**

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. SBEDA Program Compliance – Affirmative Procurement Initiatives

In accordance with the purpose and intent of City Ordinance No. 2016-05-19-0367 (the “SBEDA Ordinance”), no evaluation criteria points will be awarded to small, minority, or women-owned businesses (S/M/WBEs) under this solicitation. The SBEDA program was designed to remedy disparity by applying various goals & incentives for S/M/WBEs on City solicitations based upon the availability and utilization of qualified S/M/WBE businesses in a specified industry. The City of San Antonio has experienced success in the utilization of S/M/WBEs in the Architecture and Engineering industry category. Per the 2015 disparity study, S/M/WBEs make up 31% of the total businesses qualified to perform Architecture, Landscape Architecture and Engineering services in the San Antonio Metropolitan Statistical Area, and as of November 2018, payments made by the City to eligible S/M/WBEs in the Architecture and Engineering industry have exceeded the S/M/WBE availability in the San Antonio metro area. For more details please contact the Small Business Office directly at (210) 207-3922. Please note that City Architecture and Engineering City solicitations may still include other SBEDA program requirements, such as subcontracting goals or mentorship. **For this specific solicitation, CITY has applied no subcontracting requirements.**

C. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

For more information please see link: <http://www.sanantonio.gov/SBO/Compliance>

E. Violations, Sanctions and Penalties

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

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 CONTRACTOR 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).

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Definitions

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

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract. The M/WBE Annual Aspirational Goals for FY 2018 are:

Construction – 44.4%
Architecture and Engineering – 30.6%
Professional Services – 39.7%
Other Services – 54.8%
Goods and Supplies – 42.1%

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

process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

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

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

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

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

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

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

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

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

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

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

specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

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

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

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

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

Joint Venture Incentives – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently

Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

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

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

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

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

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

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

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is

organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

African-Americans: Persons with origins in any of the black racial groups of Africa.

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

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

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

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

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

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

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

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

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

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as

determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

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

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

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

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

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

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

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

its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

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

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

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

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

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

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

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