

ORDINANCE 2019-06-06-0458

**AUTHORIZING AN AMENDMENT TO THE SA TOMORROW AREA PLANNING CONSULTANT SERVICES PROFESSIONAL SERVICES AGREEMENT WITH MOORE IACOFANO GOLTSMAN, INC. FOR CONSULTANT SERVICES PERTAINING TO THE PHASE 1 SUB-AREA PLANS DEVELOPMENT, COMPLETION, AND TERM EXTENSION TO ALLOW ENHANCED PUBLIC ENGAGEMENT AND CREATION OF DUAL-LANGUAGE WEBSITES, FOR THE ADDITIONAL AMOUNT NOT TO EXCEED \$340,220.00 FOR A TOTAL AMOUNT NOT TO EXCEED \$1,385,220.00.**

\* \* \* \* \*

**WHEREAS**, on March 30, 2017, the City Council authorized the execution of a professional services agreement with Moore Iacofano Goltsman, Inc. (MIG), in the amount not to exceed \$1,045,000.00 for consultant services pertaining to the SA Tomorrow Area Planning Program; and

**WHEREAS**, in July 2018 the professional services agreement with MIG was amended for the first time, to extend the term of the agreement to September 30, 2019, in accordance with the original contract provisions; and

**WHEREAS**, the City Council has determined that it would be in the best interest of the City to authorize a second amendment to the MIG professional services agreement to expand the scope of services and extend the term, for the additional amount not to exceed \$340,220.00, for a total amount not to exceed \$1,385,220.00; **NOW THEREFORE**;

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

**SECTION 1.** The City Manager or designee is hereby authorized to negotiate and execute an amendment to the SA Tomorrow Area Planning Consultant Services Professional Services Agreement with Moore Iacofano Goltsman, Inc. for consultant services pertaining to the Phase 1 Sub-Area Plans development, completion, and term extension to allow enhanced public engagement and creation of dual-language websites, for the additional amount not to exceed \$340,220.00 for a total amount not to exceed \$1,385,220.00.

**SECTION 2.** If a contract can be finally executed, within sixty (60) days, in substantial compliance with the terms and conditions as those set out in the draft agreement attached hereto as **Attachment "P"**, the City Manager or designee is authorized to execute such a contract without further City Council action. Should a contract be finally negotiated which varies from the standard terms, the contract must be considered through a subsequent ordinance.

**SECTION 3.** The sum of \$340,220.00 is hereby appropriated in the designated funds below and will be disbursed from the following General Ledgers, Cost Centers, and Internal Orders. Payment not to exceed the budgeted amount is authorized to Moore Iacofano Goltsman, Inc., and should be encumbered with a purchase order.

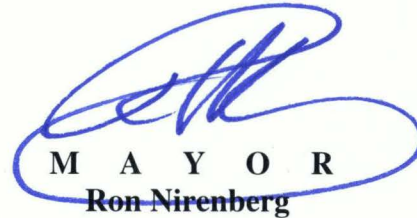
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06/06/2019  
Item # 17

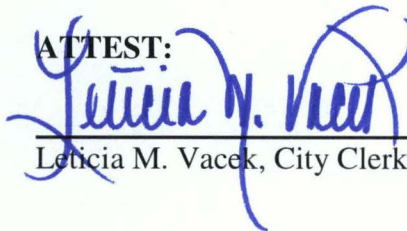
Fund	General Ledger	Cost Center	Internal Order	Amount
11001000	5201040	5002000001	N/A	\$340,220.00

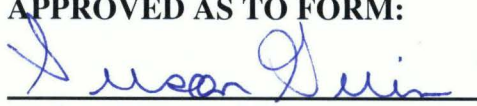
**SECTION 4.** The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, 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 shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 6<sup>th</sup> day of June, 2019.

  
**M A Y O R**  
**Ron Nirenberg**

**ATTEST:**  
  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**  
  
\_\_\_\_\_  
for Andrew Segovia, City Attorney



<b>Agenda Item:</b>	<b>17 ( in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17 )</b>
<b>Date:</b>	06/06/2019
<b>Time:</b>	09:21:31 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	Ordinance amending the SA Tomorrow Area Planning Consultant Services Professional Services Agreement with Moore Iacofano Goltsman, Inc. pertaining to the Phase 1 Sub-Area Plans development and completion by extending the term to September 2020, with an option for an additional six month extension, to allow enhanced public engagement and creation of dual-language websites for the an additional amount of \$340,220.00, and for a total amount not to exceed \$1,385,220.00. Funding for this amendment is included in the FY 2019 General Fund Budget. [Lori Houston, Assistant City Manager; Bridgett White, Director, Planning]
<b>Result:</b>	Passed

<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
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				

# **ATTACHMENT “I”**



**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT  
FOR  
SA TOMORROW AREA PLANNING CONSULTING SERVICES**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This amended and restated Professional Services Agreement for SA Tomorrow Area Planning Consulting Services is entered into by and between the City of San Antonio ("City") and Moore Iacofano Goltsman, Inc. (MIG), ("Consultant"), both of which may be referred to herein collectively as the "Parties".

WHEREAS, City and Consultant entered into an agreement entitled "Professional Services Agreement for SA Tomorrow Area Planning Consulting Services" ("Original Contract"), pursuant to Ordinance No. 2017-03-30-0169, under which the Parties set forth their agreement for Consultant to develop six sub-area plans, including Project Chartering, Analysis and Visioning, Plan Framework, Recommendations and Implementation Strategies, Documentation and Adoption, and Ongoing Coordination and Engagement for the Downtown Area Regional Center, the Midtown Area Regional Center, the Medical Center Area Regional Center, the Brooks Area Regional Center, the UTSA Area Regional Center, and the Westside Community Area; and

WHEREAS, City and Consultant amended the Original Contract to extend the Term, in accordance with Section XVI of the Original Contract, and said amendment ("Amendment I") became effective on July 17, 2018; and

WHEREAS, the Parties now wish to amend the Contract to expand the Scope of Services, extend the Term, and update the Compensation Scheduled, as described herein;

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

**I.     DEFINITIONS**

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

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

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

“Department” shall mean City of San Antonio Planning Department.

“Director” shall mean the director of City’s Planning Department.

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on March 30, 2017 and terminate on September 30, 2020. The City Manager or designee is authorized to amend this Agreement by extending the term for a period of up to six months in accordance with Article XVI. Amendments.

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

## **III. SCOPE OF SERVICES**

3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation to Consultant.

3.2 The objective of this scope of work is to develop six sub-area plans: the Downtown Area Regional Center Plan, the Midtown Area Regional Center Plan, the Medical Center Area Regional Center Plan, the Brooks Area Regional Center Plan, the UTSA Area Regional Center Plan, and the Westside Community Area Plan.

3.3 The scope of work shall include the following tasks: Project Chartering, Analysis and Visioning, Plan Framework, Recommendations and Implementation Strategies, Documentation and Adoption, and Ongoing Coordination and Engagement.

### 3.3.1 Project Chartering

The Project Chartering phase of the project will focus on finalizing the scope, budget, and schedule for the overall effort and the individual plans. Another emphasis will be determining the Planning Team membership and finalizing the detailed plan area boundaries for each geography. Project Chartering will also include an analysis to refine estimates for capture of growth in all regional centers and to determine how total projected growth for the City should be allocated into each Regional Center, and more generally to the



future high capacity transit corridors as delineated in the adopted SA Tomorrow Comprehensive Plan.

A. Kick-off Meeting

Consultant Team will facilitate a meeting between sub consultants, Planning Department leadership, project managers for each plan area, and other involved parties, including VIA, Office of Sustainability, Transportation & Capital Improvements Department, Parks & Recreation Department, and San Antonio Metropolitan Health District to review the project framework, schedule, and overall effort for each of the six individual Sub-Area Plans.

B. Detailed Scope and Schedule

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

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

C. Identification and Confirmation of Planning Team

City staff will identify community representatives, stakeholders, and others to be engaged as Planning Team Members. Each Sub-Area Plan will have its own Planning Team. Shortly after a Planning Team is formed, Consultant and City staff will meet with each group to discuss specific area's planning process, expectations, roles, and responsibilities. This also includes a review and discussion regarding the approach to the public participation process. Consultant will lead the group in a brainstorm of initial community priorities including issues and concerns, top concerns the Sub-Area Plan should address, and initial research tasks. Using the Draft Comprehensive Planning Map developed by City staff, Consultant will work with each Planning Team to review and refine plan area boundaries as necessary. The plan area boundaries will be finalized prior to any technical analysis or planning begins. It is envisioned that each Planning Team will help review the text of the Plan throughout the planning process. It is understood that City staff will take the lead role organizing the Planning Teams with input from the Consultant Team. Consultant will assist City staff by developing expectations and meeting



procedures to ensure the Planning Team participants stay informed and engaged throughout the process.

#### D. Growth Allocation for Regional Centers and Corridors

Just as the Comprehensive Plan was guided by the notion that the County will need to absorb a population increase of 1.1 million people by 2040, parameters are needed to guide how much population, housing, and employment growth each Regional Center and corridor area within Regional Centers and Community Areas can likely absorb over that same time. Parameters developed in the Comprehensive Plan Initial Studies estimated that the Regional Centers could capture at least 50 percent of new jobs and 20 percent of new housing. The Consultant Team will revisit these assumptions and generate a revised, agreed upon working goal for capture in centers that will be used to guide plan development for all 13 centers. Consultant will augment existing AAMPO traffic analysis zone (TAZ) forecasts. The adjustments will result in estimated potential capture for each regional center in this study. These estimates will help guide the land use planning efforts. Working from the SA Tomorrow existing conditions report, and incorporating available updated data, Consultant will develop a citywide economic and demographic profile that can also be used as a foundation for each Regional Center and Community Area plan. The Consultant Team will lay out the citywide profile in a highly graphic 4 to 6 page layout, including infographics.

#### 3.3.2 Analysis and Visioning

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

#### A. Assessment of Theme Groupings and Connections

The Consultant Team will work with Planning Department staff and other City departments, including the Economic Development Department (EDD), to develop cross-cutting frameworks with the potential to help address citywide issues and better integrate Regional Centers and Community Areas with either geographic or thematic connections. The Consultant Team will develop and explore three or four thematic connections.

The Consultant Team will provide a summary memo of approximately 6 to 10 pages detailing up to four potential thematic connections and evaluating their value and support. City staff will be responsible for

vetting the thematic connections and determining whether one or more of the higher order themes will move forward as an organizing framework throughout the remainder of the planning process.

#### B. Existing Conditions Mapping and Analysis

Consultant will develop existing conditions maps and associated analysis for each of the plan areas. Where inadequate and inaccurate base information exists, Consultant will work with City staff to provide a consistent set of base information for each sub-area to convey this information in a comprehensive and digestible format to the community.

B.1. Demographic and Economic Profile – Consultant will develop a succinct demographic and economic profile to serve as a foundation for the existing conditions assessment of each planning area. The profile will also include a high level identification of existing barriers to development.

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

B.3. Review Summary of Previously-Adopted Land Use Plans (Neighborhood, Community, Perimeter, Corridor, Sector Plans, etc.) – Consultant will review a summary of previously adopted land use plans prepared by City staff. The summary will include a map of the currently adopted land use plans, discussion of areas where multiple plans apply (e.g. sector plan overlap), highlighting all of the land use and text amendments that have been approved since the original plan was adopted. The summary may include a brief section related to city-initiated plan updates and some discussion of the failure to implement certain plan components.

B.4. Existing Building Blocks and Place Types – The Consultant Team will operationalize the building blocks and place types from the SA Tomorrow Comprehensive Plan and then map each



of the six plan areas with the existing building blocks and place types. The intent is to summarize the existing urban form in each of the study areas. The building blocks will include the overall regional centers, urban centers, corridors, and neighborhoods. The mapping of places will include the applicable places types from the twelve places identified in the SA Tomorrow Comprehensive Plan.

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

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

The Consultant will deliver a map package; one map of each planning area identifying the complete multimodal transportation network in the study area (based on available data); one map for each planning area that shows only bicycle and pedestrian networks; one map for each planning area that shows the roadway and transit network.

B.6. Existing Infrastructure and Amenities – The Consultant will work with City staff, the Planning Team, and partner agencies to gather data to understand the existing capacity of major utility infrastructure and access to public amenities including parks, plazas, trails, community facilities, libraries and pools.

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

The Consultant will also coordinate with the teams working on Community Health and Parks & Recreation planning and analysis to



identify gaps in access to parks, open space, and up to two additional community amenities as identified and prioritized by the Planning Teams. The choice of community amenities that are mapped may be limited based on the availability of spatial data.

The Consultant will use the results of the Issues and Gaps identification to identify potential improvements that address existing capacity and access issues. The result will be a set of maps and short memos itemizing potential improvements.

### C. Areas of Change and Areas of Stability Analysis

Each Regional Center and community plan area will be analyzed to identify Areas of Change and Areas of Stability. Areas of Change indicate where major change is expected/can happen in each planning area while Areas of Stability will classify the parts of each planning area expected to experience incremental or small scale changes.

C.1. Areas of Stability Identification and Stabilization and Enhancement Strategy – The Consultant Team will perform a geo-spatial analysis to identify areas that are less likely to undergo significant change. Factors that may be considered include improvement to land ratio, age of structures, historical and cultural designations, land use type, etc.

C.2. Areas of Change Identification – The Consultant Team will perform a geo-spatial analysis to identify the land available for development in each planning area based on vacant and potential redevelopment parcels. The Consultant Team will collaborate to identify the greatest opportunity locations for economic development and job creation and higher density housing development. The Consultant Team will then estimate the potential development yield based on existing and potential land use designations, the regional center and corridors growth projections and market conditions. The analysis will build off the areas of change and stability analysis and will focus on areas of change. The goal is to identify more specific densities and focus areas based on targets for housing and jobs.

- Economic Development and Housing Assessments – Economic and housing demand assessments will be performed to identify opportunities for economic growth, housing demand by type, and affordable housing and jobs access needs/issues.
- Housing and Job Capture Target Development – The growth estimates developed will be compared to the land capacity to develop refined housing and job capture targets that are

realistic based on land capacity and market demand/feasibility.

C.3. Transition Areas Strategy – Consultant will work with City staff, the Planning Team and the community to identify a set of specific land use, design, connectivity and parking strategies to mitigate issues and concerns related to transitions between various densities and land uses. The result will be a summary memo articulating specific transition strategies for transitioning between areas of stability and areas of change and between planning areas when they are physically adjacent to one another.

#### D. Visioning and Goal Setting

The Consultant will evaluate inputs from residents, business owners and employees, as well as stakeholders and agencies active in each area, to construct a vision statement and planning goals. The vision statement is intended to capture in one to three sentences the overall purpose of each plan and the identity of each planning area. The visions will be aligned with the overall vision for the City articulated in the SA Tomorrow Comprehensive Plan. Up to eight (8) goals will guide the creation of the Plan Framework, and will address identified plan components, such as housing, economic development, mobility and public amenities, etc. The visioning and goal setting summary memo will also include an element of branding whereby the Consultant Team will use Planning Team and community input to describe the future character and identity of the area. If appropriate to the plan area, the Consultant Team may also suggest a center or district name for use in the final plan document.

#### 3.3.3 Plan Framework

The Plan Framework phase of the project will focus on working with the community and stakeholders to establish the Plan Framework. The Framework for each plan area will include land use and urban form, identification of and planning for catalytic sites, infrastructure and utilities planning, mobility and connectivity for all modes, public realm and placemaking, and place types.

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

The Consultant will develop a set of maps for each plan area reflecting desired land uses, building blocks, and place types. The maps will incorporate key findings and recommendations from existing neighborhood plans, the SA Tomorrow plans, and SA Corridors. Consultant will develop up to three iterations of proposed Future Land Use maps for each plan area and revise them accordingly based upon community feedback and revisions to the Future Land Use Categories.



Consultant will also assist City staff in developing the methodology for the Future Land Use Categories through conference calls, web-conferences, and facilitated work sessions, as needed.

A.1. Future Building Blocks and Place Types Map – Future building blocks and place types maps will be created for each of the plan areas. A map for each of the plan areas will reflect input from the Planning Team and the broader community. A comparison of the existing and future building blocks and place types maps will help to inform the refined areas of stability and areas of change, as well as future land uses.

A.2. Areas of Change and Stability Land Use Plans – Land use approaches and plans for both Areas of Change and Stability will be created. The land use approach and plans for areas of change will focus on guiding future development and creating identified place types. For each center, catalytic opportunity sites/areas will be identified within Areas of Change that will help transition the centers towards their desired future conditions. Real estate development and placemaking strategies will be developed. As well, transition area land use approaches will be developed to address the transition between Areas of Change and Areas of Stability. The land use approach for Areas of Stability will focus on mechanisms to preserve character and enhance existing conditions through incremental, small scale improvements and changes.

A.3. Analyze Neighborhood Level Land Use – This subtask will identify the more technical challenges related to land and building uses that have a negative impact on neighborhood stability, in terms of quality of life and of economic performance. Over time, property uses often change, buildings age, and landowners sell or vacate their property. This often creates challenges for City staff and public officials related to regulation and code enforcement, and to the economic stability of an area.

For this task, the team will identify key land use-related challenges that are observed in each neighborhood. A larger set of issues will be defined more globally and then those relevant to each neighborhood will be identified in a matrix format. The deliverable for this task will consist of a report, generated in MS Word, of 8-10 pages in length for each plan area highlighting the individual neighborhoods. The report will include a summary table of challenges as an appendix, and will be illustrated by photos.

A.4. Identification of Potential Zoning Changes – To encourage desirable and manageable development patterns, the Consultant will



recommend zoning changes for each of the six planning areas. The Consultant Team will use the existing palette of land use designations as defined in the Unified Development Code to the extent possible, and suggest new or altered designations if necessary. For each of the six planning areas, the Consultant Team will provide a map and a written summary of recommended changes. The maps will indicate where changes of zoning for particular properties would promote the vision, goals, and objectives of the planning area. The written summary will address larger code-related changes that would facilitate the vision and goals for each area, such as modifications to standards, to the categories themselves, or procedural changes (such as incentives and application requirements) that would encourage desirable development activity.

The Consultant Team will produce six maps of potential zoning changes and a written summary of approximately six pages. The summary will be compiled in MS Word and the maps will be provided in both shapefile and JPEG format.

#### B. Parks, Public Space, and Recreation Plan

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

#### C. Mobility and Access Improvement Plan

C.1. Establish Layered Network Priorities Map – The Consultant Team will research and utilize input from the City, public, and key stakeholders to develop a Layered Network Priority Map. The map will be developed in either Adobe Illustrator or ArcGIS and will identify priority needs in the study area related to mobility and access for all modes.

C.2. Recommend Mobility Enhancements that are aligned with the VIA Vision 2040 Plan, SA Tomorrow Multimodal Transportation Plan and SA Corridors – In response to the priorities documented in the 'Layered Network Priorities Map', the Consultant will identify improvements and new connections that address these needs, to enhance mobility and access within the study area. The recommendations could include features such as the identification of bicycle and pedestrian improvements, freight service/parking areas,

new connections, or intersection improvements. The Consultant will produce a technical memorandum listing the recommended improvements applicable to the study area. This and information from the following task will inform Task 3.3.4.A.2 related to recommended streetscape and major thoroughfare cross-sections.

#### D. Infrastructure and Amenities Improvement Plan

The Consultant Team will use the Issues and Gap Analysis from Task 3.3.2.B.6 to develop a recommended Infrastructure and Amenities Improvement Plan for each plan area. The selected recommendations will be derived from aligning potential improvements with the preferred building blocks, place types, and land use mapping from above. The suggested improvements will also build on recommendations in the SA Tomorrow Multimodal Transportation and Sustainability Plans, SA Corridors, Infrastructure Plans, VIA's Vision 2040, City of San Antonio Parks & Recreation System Strategic Plan, etc. MIG will also coordinate with project partners in infrastructure improvement identification, design, and implementation. A summary memo for each plan area will include an improvements map and sections summarizing the following: Planned and Needed Infrastructure Improvements, and Recommended Assets and Amenities for "Complete" Neighborhoods.

#### E. Identification of Catalytic Sites for Development and/or Placemaking

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

E.1. Catalytic Site Identification – The Consultant will work with the Planning Team and the community to identify potential catalytic sites that will likely be vacant or underutilized properties with Areas of Change. A map will be created that identifies all potential sites and a matrix of key characteristics (size, zoning, future land use designation, building block and place type designation, etc.)

E.2. Catalytic Site Concepts – For up to three catalytic sites in each plan area, the Consultant will develop a conceptual site plan, development program and precedent photos of how that site could be developed to catalyze the vision for the regional center or community area. The Consultant will produce a plan view illustrative site plan, a development program, a pro forma with gap analysis, and precedent images for each of the catalytic development sites. The Consultant will lead a workshop on implementing Catalytic Site Concepts for City staff. This workshop may be either in-person (if it occurs during a meeting window) or through a tele/web conference.



E.3. Creative Placemaking Analysis – Consultant will also prepare up to two conceptual site plans for public space and placemaking improvements on catalytic sites within each plan area. Consultant will produce a plan view illustrative site plan, a sketch level vignette and precedent imagery for each recommended public space.

#### F. Economic Development Strategy

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

#### G. Housing Strategy

The Consultant Team will develop a housing strategy for each regional center. The strategy will spell out the goals and objectives for housing in each center, including housing targets that will be developed for both market rate and affordable housing. The strategy will incorporate and build upon the applicable Neighborhood Improvement Areas as identified and discussed in the City's 2017 Urban Renewal Plan. The analysis will identify barriers to housing development and develop strategies to address those barriers. Lastly, a livability analysis will be developed to identify changes needed in each Regional Center and Community Area center to increase the attractiveness of living in the centers. The outcome will be action steps to address housing issues.

#### 3.3.4 Recommendations and Implementation Strategies

The Recommendations and Implementation Strategies phase will be used to develop specific projects, programs, and policies to affect change in each of the plan areas. The phase will also include the development of specific action-oriented implementation strategies. Finally, it will include recommendations for update to the Unified Development Code and creation of design guidelines.



#### A. Priority Investments and Phasing

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

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

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

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

#### B. Implementation Action Plan

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

B.1. Zoning and Policy Recommendations – The zoning and policy recommendations that the team will generate will build upon the possible zoning changes developed in the Plan Framework phase, Section 3.3.3. The recommendations will be organized into two matrices: one for recommended zoning changes and one for recommended policy changes. The matrices will be embedded in a report, with supporting text discussing the context of the tables. The

table will be color coded to indicate prioritization of the recommended action. The report will be approximately ten pages in length, and the matrices will be provided as standalone files, in excel and PDF formats, as well as embedded components of the report.

B.2. High-Level Economic Impact of Implementing Land Use Plan and Zoning Changes – The Consultant Team will prepare a high planning level analysis of the potential impact of suggested land use and zoning changes. The analysis will look at the aggregate change by plan area and estimate the potential increase or decrease in potential value based upon changes in use and entitlements. The Consultant will also use these estimates to calculate a rough magnitude of order change in revenues for the City assuming full build out.

B.3. High Level Design Guidelines/Standards Development – The design guidelines/standards will provide a common language to convey the proposed improvements for the five Regional Centers, and the Community Area Plan through graphic visualization, and narrative description. The process to develop the information will include, but may not be limited to the following efforts:

- Attend meetings and presentations throughout the process to gain a holistic overview of the concerns for each regional center.
- Collaborate with the team, and stakeholders to identify high level prescriptive solutions for each regional center.
- Develop macro level narratives, and graphic images to convey the proposed solutions for each regional center.

B.4. Neighborhood-Specific Action Plans – The Neighborhood-Specific Actions Plan is a critical component of this planning effort and will be included in all Regional Center and the Community Plan for all established residential areas, even if they are not formally organized and registered as neighborhood associations, and whether or not they are included in a previously-adopted land use plan. The Action Plans will be 2-5 pages per geography, focus on the short- to mid-term actions, and include the following:

- Unique features of the geography;
- Issues and priorities specific to the geography;
- Implementation Action Steps; and
- Geographic-specific land-use map (a focus on a sub-geography of the overall land use plan).

### C. Community Programming and Placemaking Strategy

The Consultant will work with project partners and the Planning Team to identify specific actions related to programmatic elements, events and



activation of existing and future public spaces. Community programming refers to programs (e.g., Neighborhood Watch and Safe Routes 2 School) and events (e.g., cultural festivals, farmers markets, and neighborhood clean-ups). The result will be a matrix of prioritized community programming and placemaking actions. Recommendations with a physical location or spatial component will be mapped for each planning area.

#### D. Supplementary Concept Diagrams and Enhanced Illustrations

For each of the sub-areas, the Consultant will work with City staff to identify a set of supplementary Concept Diagrams and Enhanced Illustrations to better demonstrate select recommendations in the Plan. Each Sub-Area may have different needs for these supplementary graphics, and the Consultant will work with City staff to identify the best candidates based upon community feedback gathered during the review period for the Public Draft and the Administrative Draft Plans (see Section 3.3.5.A). Each Sub-Area will have no fewer than three, but no greater than six additional Concept Diagrams and/or Enhanced Illustrations.

#### 3.3.5 Documentation and Adoption

The Documentation and Adoption phase of the project will largely be devoted to finalizing the e-Plan, creating the Executive Summaries, and assisting in the approval and adoption process. The Consultant will also meet with appropriate groups to develop additional next steps that will be critical to supporting implementation. These may include organizational changes, key hires, new funding streams and suggested legislation.

##### A. Public and Administrative Drafts Plan

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

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

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

B.1. The Consultant Team will develop e-Plans that will increase ease of use for both internal (content creators) and external (site visitors) users, while simultaneously eliminating problematic and unsafe architecture, while employing contemporary website/e-Plan design to fit visitor expectations. The landing page for the existing SA Tomorrow website will be modified to include links to the individual project websites/e-Plans. The SA Tomorrow Comprehensive Plan's e-Plan will also include multiple links and interactive maps that will lead interested users to the websites/e-Plans for the subject plan areas.

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

- Website Hosting and Server Configuration (JAMB stack) on the BowTie/AWS cloud.
- Customized Website/e-Plan Design – including both information and visual design, and any graphics support requested/required.
- Website development, implementation, and publication.
- Information design – Consultant will assist in simplifying/organizing content and site structure to fit the e-Plan framework, and to improve visitor experience when accessing the e-Plans including views, information search, and quick navigation links.
- Site will be editable by multiple people without HTML knowledge, and include a comprehensive training document.
- Navigable menu bar for content, with crosscutting themes throughout the plan, interactive maps, and other pertinent sections.
- Have a clear area for updates to facilitate the use of the site as a project update tool to the community.
- Direct linking to all related e-Plans, including SA Tomorrow, for easy cross navigation.



- Interactive maps and graphics designed to enrich select data and plan elements.
- Main page with navigation across main sections, crosscutting themes, and containing information on the plan itself for context to users.
- Topical background and vision section for context of the e-Plan.
- Search functionality across full e-Plan.
- Inclusion of all plan sections for mirrored content between print plan and e-Plan.
- Document repository for full plan pdf(s) as well all subsections, and supporting materials found in of plan.
- Terms of Service and sitemap pages.
- Acknowledgements section for team members, supporters, stakeholders, and others.
- Automatic source version control and data backups to ensure information fidelity.

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

B.2. Website Architecture Improvements, Performance Enhancements, and Recoding – Consultant will revise the website architecture to incorporate more dynamic public comment functionality to allow for a more robust public participation interface. Consultant will also make website architecture improvements to increase the legibility and navigability on mobile devices. Consultant will recode portions of the project websites to integrate City staff's desire to utilize Constant Contact email management and distribution lists for each Sub-Area.

### C. Executive Summary Documents

The Consultant Team will develop an 8 to 12-page executive summary for each of the plan areas that will provide a high-level summary of each of six Area Plans developed for easy reproduction and distribution to community members and potential partners. The Consultant Team will graphically design the executive summary and provide print ready files to the City. The Consultant Team will provide a version of each Executive Summary in Spanish. The City will be responsible for producing copies of the summary documents.

#### D. Support for Approval and Adoption Processes

The Consultant Team will provide conference call and power point support for three rounds of the approval and adoption process per Area Plan, including City Council Briefing, Planning Commission, and City Council Adoption Meeting. Consultant will work with City staff to align briefing and adoption meetings for multiple plans when possible.

#### E. Next Steps Strategy Meetings

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

#### F. Spanish Translation of Adopted e-Plans

Consultant will translate all pieces of text content for each of the adopted Sub-Area e-Plans into Spanish. This will include a systematic updating of all text content, as well as all text within maps, illustrations, and graphic content for each of the Sub-Area Plans. Consultant will integrate variable text for each piece of copy on all e-Plan interfaces to create dual-language functionality that can be accessed by all users of the e-Plan.

### 3.3.6 Ongoing Coordination and Engagement

The Ongoing Coordination and Engagement phase of the scope of services is actually ongoing from project initiation through plan adoption for each geography. This ongoing phase includes community engagement strategy, implementation, coordination with concurrent planning efforts and partner agencies, and project management, and coordination. Messaging and marketing will be coordinated with a marketing firm, to be selected by the City, who will be tasked with continuing SA Tomorrow Comprehensive Plan public awareness.

#### A. Community Engagement Strategies

A.1. Plan Identifying Key Stakeholders, Level of Engagement and Recommended Tools – The Consultant Team will work with City staff to identify and target individuals, community groups (e.g.,



neighborhoods, community centers), traditional and social media groups, elected and appointed officials, representatives from educational institutions (from pre-K to university), businesses and non-profits (owners, managers, employees, customers, clients), and others (e.g., environmental, professional, and trade groups.) to allow for a broad range of stakeholders and community members to get involved at the level that is most appropriate for them in each Area Plan.

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

A.3. Include public participation throughout the planning process as well as a public review period after the plan is drafted – The Consultant Team will work with City staff to develop a public participation strategy for meetings and events in each of the six planning areas to include area-specific process, agenda, and messaging, based on audiences and objectives.

A.4. The Consultant Team will work with City staff to develop additional public participation options and corresponding materials for use during development of the Future Land Use categories. This will include advising and creating materials for additional targeted neighborhood outreach in sub-areas that may have more complicated land use issues or complex questions resulting from revisions to the Future Land Use categories.

#### B. Community Engagement Implementation

As San Antonio begins to implement the SA Tomorrow Comprehensive Plan through Regional Center and Community Area Plans, each plan process must include a robust community engagement process that allows for a broad range of stakeholders and community members to get involved at the level that is most appropriate for them. If these area plans are to truly help establish a new vision and implementation strategies for inclusive, healthy, safe, sustainable, and dynamic Regional Centers and Community Plan Areas, the community must be involved in discussing the vision, priorities, and trade-offs, and recommended strategies throughout the entire planning process. The Consultant Team will develop and deploy a multifaceted and meaningful community engagement process that is marked by both high touch and high tech tools.

B.1. Baseline Tools include:

- Stakeholder Focus Groups – The Consultant Team will conduct a series of focus groups throughout the planning process as a means of engaging key stakeholders, organizations, and interest groups as the need and opportunity presents itself. Consultant will begin outreach to the focus groups in the first month of each area plan process and then follow up with these and other stakeholders as deemed appropriate and necessary throughout the remainder of the effort. The Consultant Team will conduct a number of focus groups commensurate with the budget allocated to the task. It is assumed that this task will include approximately six to eight focus groups throughout the process for each area plan. A key outcome will be to understand what each group sees as a successful plan process and outcome.
- Planning Team Meetings – The Consultant Team will facilitate, prepare meeting materials, and generate presentation content for eight or nine Planning Team meeting windows per Area Plan depending on the complexity of each plan. Consultant will work with City staff to align meeting windows among the six plans as often as possible. Topics covered during meeting windows include: preliminary plan vision, values, and goals; base concept development and strategies; multimodal and corridor development and alignment with the Multimodal Transportation Plan and Sustainability Plan; etc.
- Community Meetings and Open Houses – The Consultant Team and City staff will hold three community meetings for each Area Plan with a combination of interactive workshops and an open house. Consultant will plan, facilitate, and summarize the community meetings. City staff will be expected to secure a location and promote the meetings.
  - Community Meeting #1 – will focus on the vision, values, and goals for each plan area.
  - Community Meeting #2 – will present initial plan concepts and strategies to the community.
  - Community Meeting #3 – will be primarily an open house format to present the final plan for each area.



- Intercept / Pop-Up Event Materials - City staff will organize and facilitate interactive community events that “intercept” people as they go about their daily lives. Consultant will create a graphic poster for each Plan Area and one overview poster for the entire effort. The intention is to engage and educate residents, employers, and visitors and provide a forum for a more localized look at issues and opportunities.
- Digital Design Charrette – Collaborative work-sessions and design charrettes are well-used tools that blend the design process with community/stakeholder engagement. In the same way that layers of trace paper and markers are used atop base maps to illustrate ideas that participants discuss and evolve so are these digital tools. The Digital Design Charrette builds on these proven methods to explore design and planning scenarios with a set of digital tools that allow for not only rapid idea consideration but also detailed numeric and three-dimensional analysis.

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

As the ideas discussed around the table take shape a facilitator illustrates them on the computer which is projected to a large display allowing, not just a table but, a whole room to participate. The digital nature of this process allows the concept to be vetted against any number of base mapping layers at any scale; concepts to be copied/saved/modified quickly; numeric analysis such as length and area calculations at the click of a button; and most importantly, concepts developed in a "Digital Design Charrette" are not limited to two-dimensions. We have found by designing in three-dimensions from the first pencil stroke, or in our case mouse click, we are able to gather better feedback earlier in the process where course corrections are easiest.

- Steering Committee Meetings – Consultant will provide one representative at approximately four Steering Committee

meetings throughout the process. Whenever possible, Steering Committee meetings should be scheduled during larger meeting windows with meetings for individual plan areas. Consultant will participate in up to four (4) Steering Committee meetings total. Of those four meetings, Consultant will travel for up to three Steering Committee meetings that are not part of a regularly scheduled meeting window.

B.2. Potential Additional Tools include:

- Messaging and Marketing Collateral – Create planning area-specific messaging and content and leverage it across multiple platforms including news releases, website, social media, e-blasts, invitations, blogs, and affiliated organizations' newsletters. Consultant will create and maintain the project website. In addition, members of the Consultant Team can provide up to five additional ready to deploy communications for each plan area. These may include any combination of the above list.
- Social Media Outreach – The Consultant Team will coordinate with the Planning staff and the City's Government and Public Affairs Department on joint marketing and communications strategies to develop media, key themes, and messages to support the overall strategy for social media for each of the area plans. Consultant will provide recommendations on messaging and scheduling. City staff will be responsible for implementing social media outreach.
- Outreach Toolkit and Staff Training – Consultant will design and develop two Outreach Toolkits to be used by City staff to meet with a variety of community groups, associations and individual citizens to collect community input in a variety of settings, such as regular meetings of community organizations or at a gathering of interested neighbors. Each toolkit will include a discussion guide and PowerPoint presentation for a 10-minute presentation as appropriate. Consultant will develop a toolkit that corresponds with two key periods of plan development. Toolkit 1 will be developed for the beginning of the projects to generate interest in the planning process. Toolkit 2 will be developed midway through the project in order to get feedback as the draft Plan develops. It will generally correspond with the timing of Workshop #2. Consultant will



conduct one training session for City staff on how to use the Outreach Toolkits. This training may be either in-person (if it occurs during a meeting window) or through a tele/web conference. City staff will be responsible for summarizing the results of these efforts for the Consultant Team.

C. Community Engagement Reports

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

D. Coordination with Concurrent Planning Efforts

The Consultant Team will coordinate Area Plan planning efforts with concurrent plans including the San Antonio Parks and Recreation System Strategic Plan and the Community Health Improvement Plan (CHIP).

A representative from the Consultant Team will report to the monthly VIA/SAHA interagency committee on planning efforts, and will provide feedback from this committee to the Consultant, as needed.

E. Coordination with Partner Agencies

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

F. Ongoing Project Management and Coordination

Consultant will manage its subconsultants assembled for this important project. This will include providing direction to subconsultants and quality assurance/quality control (QA/QC) of draft and final work products. It will also include processing subconsultant invoices and preparing monthly invoices for the City. This task will also include ongoing coordination with City throughout the duration of the project. The Consultant Team will

participate in regularly scheduled bi-weekly meetings with City staff throughout the entire project.

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

F.2. Planning Team Chair Meeting Prep Calls – The Consultant Team will participate in regularly scheduled calls with City staff and Planning Team Chairs for each Area Plan prior to Planning Team Meeting windows. Prep calls will be combined for two or more Planning Team Chairs as schedules and topics allow. These calls will serve as an opportunity for City staff and Planning Team Chairs to review agendas and materials to be presented by the MIG Team during Planning Team Meetings. The calls will generally be conducted by phone/WebEx as schedules dictate.

F.3. Monthly Invoices and Progress Reports – Consultant will prepare monthly invoices and progress reports for review and approval by the Planning staff. The invoices will include all staff time and direct expenses including those for the Consultant Team. The monthly progress reports will identify tasks completed during the previous month and identify upcoming tasks, events, and deliverables for the upcoming month. Progress reports will be formatted as simple memorandum and attached to monthly invoices.

F.4. Ongoing Coordination – In addition to regularly-scheduled meetings and calls, it is anticipated that the Consultant and its subconsultants will participate in ongoing project coordination and communication with the Planning staff, between team members and with various stakeholders. This communication may include participation or assistance with the Planning Teams and Steering Committee. While many tasks assume a level of team coordination and coordination between Planning staff and the consultant team, this task is intended to provide for a certain level of unanticipated coordination and strategy development above and beyond the base scope of work. There will be monthly Core Team conference calls throughout the planning process.

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



3.4.1 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding, and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.4.2 Consultant shall have a reasonable right to rely upon the accuracy and completeness of information provided by the City.

3.4.3 Consultant shall not be responsible for delays in meeting deliverable deadlines that may result due to causes beyond Consultant's reasonable control, provided Consultant notifies City in writing at least fifteen (15) days prior to any such deadline. The City may authorize additional calendar days or make adjustments to the Task schedule and related deliverables, within the existing scope of this Agreement, upon mutual Agreement in writing, between the Director and Consultant, as to the reasonableness of said additional time or adjustment.

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

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \$1,385,220.00 as total compensation under this contract. The amount of the Original Amended Contract is amended from \$1,045,000.00 to \$1,385,220.00, which is inclusive of the \$340,220.00 compensation for the amended Scope of Services herein.

4.2 Invoices shall be submitted monthly for work performed. Invoice shall be accompanied by progress report of accomplishments and work products within the period. If progress is satisfactory within each invoice period, according to work plan and compensation schedule attached as "Exhibit I," payment will be issued.

4.3 Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and upon approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Planning Department, Attention: Rudy Niño, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as



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

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

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents, or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document, or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.3 City shall own all right, title and interest in all intellectual property delivered by the Consultant under this Agreement, including, without limitation, all text, drawings, graphs, tables, photographs, illustrations and other content in fulfillment of this Agreement and related documentation developed by the Consultant for the City (collectively, "Work Product"). All such Work Product shall be considered "Works Made for Hire" (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of City. Consultant hereby assigns to City for no additional consideration, all worldwide right, title, and interest that it may possess in such Work Product including, but not limited to, all intellectual property rights thereto and Consultant shall execute such further assurances evidencing such assignment as City may require from time to time. Upon request, Consultant will take such steps as are reasonably necessary to enable City, at City's cost and expense, to carry out the intent of the above assignment and to record such assignment.

## **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by



City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

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

7.3.2 Bankruptcy or selling substantially all of company's assets.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the

written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

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

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

7.4.3 Performing unsatisfactorily.

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

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

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

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.



7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

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

If intended for City, to:

Rudy Niño  
City of San Antonio  
Planning Department  
PO Box 839966  
San Antonio, Texas 78283

If intended for Consultant, to:

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

## IX. NON-DISCRIMINATION

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

## X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Planning Department, which shall be clearly labeled "SA Tomorrow Area Planning Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be

signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Planning Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that



names the Consultant and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Consultant. Consultant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

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

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

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

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

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure



to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.12 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **XI. INDEMNIFICATION**

**11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT's activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, respondent or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS**



**FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees, or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon that Consultant intends to use the following subcontractors in the performance of this Agreement: Economic & Planning Systems, Inc. (EPS), MOSAIC, Cambridge Systematics, Inc., Auxiliary Marketing Services, SJPA, BowTie, and Worldwide



Languages. Any deviation from this subcontractor list, whether in the form of deletions, additions, or substitutions shall require written approval by the City Manager or designee in accordance with Article XVI. Amendments, prior to the provision of any services by said subcontractor.

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

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Manager, in accordance with the section and Article XVI. Amendments. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee, or subcontractor.

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

### **XIII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party



occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

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

##### **14.1 SBEDA Program**

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

##### **14.2 Definitions**

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

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



effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the 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.

**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 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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

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

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

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

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSAs), 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.



#### 14.3 SBEDA Program Compliance – General Provisions

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

- 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;
- 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;
- 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;
- 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.

- 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.
- 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.
- 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.
- CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

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

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

#### 14.4.1 SBE Prime Contract Program

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

#### 14.4.2 M/WBE Prime Contract Program

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

#### 14.4.3 M/WBE Subcontracting Program

In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract or self-perform at least **seventeen percent (17%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). If the Prime CONTRACTOR is a certified M/WBE firm, then the CONTRACTOR is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime CONTRACTOR does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

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



In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain this M/WBE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain a subcontracting goal for M/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

#### 14.4.4 Subcontractor Diversity

The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 17% that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio architecture and engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of October 2016, African-American owned firms represent approximately 2.24% of available subcontractors, Hispanic-American firms represent approximately 7.33%, Asian-American firms represent approximately 0.71%, Native American firms represent approximately 0.12%, and Women-owned firms represent approximately 3.98% of available architecture and engineering subcontractors.

#### 14.5 Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this



Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### 14.6 Prompt Payment

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

#### 14.7 Violations, Sanctions, and Penalties

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

- 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;
- 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;
- 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;
- 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

- 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:

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

## **XV. CONFLICT OF INTEREST**

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XVI. AMENDMENTS**

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant and approved by the San Antonio City Council by passage of an ordinance therefore.

16.2 Notwithstanding, the subsection above, the City Manager or designee may authorize the following amendments, in writing and executed by both the City and Consultant, without further action by the San Antonio City Council:

16.2.1 An extension of the term of this Agreement for a period of up to six months, in accordance with Article II. Term;

16.2.2 An addition, deletion, or substitution of a subconsultant, in accordance with Article XII. Assignment and Subcontracting; and/or,

16.2.3 An amendment or extension that will cause the amendment expenditure to be no more than \$50,000. Any such amendment shall be subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

## **XVII. SEVERABILITY**

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

## **XVIII. LICENSES/CERTIFICATIONS**

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

## **XIX. COMPLIANCE**



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

## **XX. NONWAIVER OF PERFORMANCE**

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

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

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

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

## **XXII. LEGAL AUTHORITY**

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

### **XXIII. PARTIES BOUND**

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

### **XXIV. CAPTIONS**

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

### **XXV. PROHIBITED CONTRIBUTIONS**

25.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

25.2 Consultant acknowledges that the City has identified this Agreement as high profile.

25.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

### **XXVI. INCORPORATION OF EXHIBITS**

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



## **XXVII. FORCE MAJEURE**

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

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

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

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

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

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

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

## **XXIX. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. This Agreement, as amended, embodies the complete agreement of the parties hereto with regard to the subject matter contained herein,

superseding all oral or written previous and contemporary agreements between the parties relating to matters herein. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

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

**CITY OF SAN ANTONIO**

**CONSULTANT**  
MIG, Inc.

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

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

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

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

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

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

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

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

Approved as to Form:

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



## Exhibit I – Work Plan and Compensation Schedule

estimated project cost					
Preliminary Cost Estimate 5 Regional Center Plans + 1 Community Area Plans		MIG, Inc.	Subconsultants Subtotal	Direct Costs	Professional Fees Totals
<b>3.3.1 Project Chartering</b>					
A	Kick-off Meeting	\$1,866	\$3,500	\$614	\$5,980
B	Detailed Scope and Schedule	\$1,955	\$800	\$0	\$2,755
C	Identification and Confirmation of Planning Team	\$1,420	\$500	\$0	\$1,920
D	Growth Allocation for Regional Centers and Corridors	\$2,720	\$12,000	\$0	\$14,720
	Subtotal	\$7,961	\$16,800	\$614	\$25,375
<b>3.3.2 Analysis and Visioning</b>					
A	Assessment of Theme Groupings and Connections	\$2,000	\$12,000	\$0	\$14,000
B	Existing Conditions Mapping and Analysis	\$35,491	\$45,328	\$0	\$80,819
C	Areas of Change and Areas of Stability Analysis	\$4,388	\$35,950	\$0	\$40,338
D	Visioning and Goal Setting	\$7,097	\$13,350	\$0	\$20,447
	Subtotal	\$48,976	\$106,628	\$0	\$155,604
<b>3.3.3 Plan Framework</b>					
A	Land Use Plan and Map Development	\$25,220	\$83,703	\$0	\$108,923
B	Parks, Public Space and Recreation Plan	\$11,765	\$0	\$0	\$11,765
C	Mobility and Access Improvement Plan	\$8,002	\$24,230	\$0	\$32,232
D	Infrastructure and Amenities Improvement Plan	\$21,755	\$2,500	\$0	\$24,255
E	Identification of Catalytic Sites for Development and/or Placemaking	\$53,170	\$16,500	\$0	\$69,670
F	Economic Development Strategy	\$1,934	\$15,980	\$0	\$17,914
G	Housing Strategy	\$1,671	\$8,020	\$0	\$9,691
	Subtotal	\$123,517	\$150,933	\$0	\$274,450
<b>3.3.4 Recommendations and Implementation Strategies</b>					
A	Priority Investments and Phasing	\$11,016	\$38,230	\$0	\$49,246
B	Implementation Action Plan	\$9,708	\$43,247	\$0	\$52,955
C	Community Programming and Placemaking Strategy	\$5,150	\$0	\$0	\$5,150
D	Supplementary Concept Diagrams and Enhanced Illustrations	\$12,000	\$0	\$0	\$12,000
	Subtotal	\$37,874	\$81,477	\$0	\$119,351
<b>3.3.5 Documentation and Adoption</b>					
A	Administrative Draft	\$42,675	\$500	\$0	\$43,175
B	Project Websites and e-Plans	\$16,965	\$115,150	\$0	\$132,115
C	Executive Summary Documents	\$11,870	\$1,000	\$0	\$12,870
D	Support for Approval and Adoption Processes	\$2,950	\$6,200	\$0	\$9,150
E	Next Steps Strategy Meetings	\$5,370	\$1,000	\$0	\$6,370
F	Spanish Translation of Adopted e-Plans	\$31,070	\$85,000	\$0	\$116,070
	Subtotal	\$110,900	\$208,850	\$0	\$319,750
<b>3.3.6 Ongoing Coordination and Engagement</b>					
A	Community Engagement Strategies	\$18,700	\$3,700	\$0	\$22,400
B	Community Engagement Implementation	\$161,520	\$67,300	\$28,005	\$256,825
C	Community Engagement Reports	\$2,515	\$0	\$0	\$2,515
D	Coordination with Concurrent Planning Efforts	\$2,020	\$1,500	\$0	\$3,520
E	Coordination with Partner Agencies	\$2,355	\$8,200	\$0	\$10,555
F	Ongoing Project Management and Coordination	\$151,113	\$43,762	\$0	\$194,875
	Subtotal	\$338,223	\$124,462	\$28,005	\$490,690
Costs Subtotal		\$667,451	\$689,150	\$28,619	\$1,385,220
Total Project Cost					\$1,385,220