

**PROFESSIONAL SERVICES CONTRACT
FOR
ON-CALL LEAD AND ASBESTOS CONSULTANT SERVICES**

This PROFESSIONAL SERVICES CONTRACT (this “**CONTRACT**”) is hereby made and entered into by and between CITY OF SAN ANTONIO, a Texas municipal corporation (“**CITY**”) and _____ (“**CONSULTANT**”) pursuant to Ordinance No. 2019-__-__-_____.

WHEREAS, CITY wishes to engage CONSULTANT on an on-call, as-needed basis, to perform certain lead-based paint, mold and asbestos inspections, risk assessments, consulting, monitoring, and other services in connection with the housing programs administered by the Department of Neighborhood and Housing Services (the “**Project**”); and

WHEREAS, funding for payment of the services provided under this CONTRACT come from the United States Department of Housing and Urban Development’s Lead Hazard Reduction Demonstration Grant program (“**LHRDG**”), Community Development Block Grant program (“**CDBG**”), HOME Investment Partnerships program (“**HOME**”), and CITY’s general fund; and

WHEREAS, CONSULTANT represented to CITY that it possesses the necessary skills and certifications to perform the Project and is willing to serve as an on-call consultant when and as requested by CITY.

NOW THEREFORE, 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

1.1 For purposes of this CONTRACT, in addition to the definitions and references set elsewhere in this CONTRACT, the following terms shall have the meanings ascribed to them below:

“**Abatement**” means permanently eliminating environmental hazards, through removal, component replacement, encapsulation, and enclosure.

“**Business Day**” means every day of the week, except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by the City Council for its employees.

“**Clearance**” means an activity conducted following environmental hazard reduction activities to determine that the environmental hazard reduction activities are complete.

“**Days**” means calendar days.

“**Governmental Authority**” means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, or otherwise), whether now or hereafter in existence.

“**Homeowner**” means the owner(s) of the land and improvements in, on, or at which the CONSULTANT will perform Work (defined below) pursuant to this CONTRACT.

“**Interim Control and Standard Treatment**” includes addressing friction and impact surfaces, creating smooth and cleanable surfaces, paint stabilization, and sodding of bare soil.

“Lead Hazard Evaluation” means a risk assessment, a comprehensive lead inspection or a combination of these activities to determine the presence of lead-based paint hazards or lead-based paint in compliance with Residential Lead-Based Paint Hazard Reduction Act of 1992 – Title X and 24 CFR Part 35.

“Lead Hazard Reduction” means activities designed to reduce or eliminate exposure to lead-based paint hazards through methods including interim controls or abatement.

“Legal Requirements” means (A) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to CONSULTANT, the aforementioned grants, or the Property, including , without limitation, the ownership, use, construction, rehabilitation, development, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; (B) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Property or the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; (C) CONSULTANT’s presently or subsequently effective bylaws, certificate of formation, or partnership, limited partnership, joint venturer, trust or other form of business association agreement; and (D) any and all leases related to the Property; and (E) other contracts, whether written or oral, of any nature to which CONSULTANT may be bound and that relate in any way to the Property or the Project.

“Material” means (i) as to monetary matters, any amount in excess of One Thousand and No/100 Dollars (\$1,000.00), or (ii) as to all other matters, any fact or circumstance without which CITY, in its sole opinion, would not have selected CONSULTANT to receive, or paid to CONSULTANT, the compensation.

“Occupant Protection Plan” means the measures and management procedures that will be taken during the lead hazard control activities to protect the occupants of the Property from exposure to any lead-based paint hazards.

“Property” means the land and improvements owned by the Homeowner, and in, on or at which the CONSULTANT will perform the Work pursuant to this CONTRACT.

“Scope of Work” means the services, inspections, assessments, testing and other matters described in Exhibit “A” attached hereto and incorporated fully herein.

“Work” means all labor, equipment and materials necessary to implement and manage various environmental consulting activities for inspection of lead, asbestos, mold, and monitoring work as required by the Texas Department of State Health Services at, in, or on each Property in strict accordance with Scope of Work.

II. TERM

2.1 Unless renewed and extended pursuant to Section 2.2 or terminated pursuant to Article XXXI, this CONTRACT shall commence on the Effective Date and shall terminate on **June 30, 2020**.

2.2 CITY may, in CITY’s sole and absolute discretion, unilaterally elect to renew and extend this CONTRACT for up to two (2) additional one (1) years extensions on the same terms provided herein. CITY may elect to exercise each option to renew and extend at any time, subject only to and contingent upon the appropriation of funding by City Council for that renewal period. Each one (1) year renewal and

extension period shall commence on the effective date of the amendment pursuant to Section 29.3. By way of example only, if CITY exercises the first option to renew and extend in January, 2020, and the Parties executed an amendment on February 1, 2020, the first renewal period would commence on February 1, 2020 and expire on January 31, 2021.

III. RESPONSIBILITIES

3.1 Upon written request, CONSULTANT agrees to provide those services requested by CITY, as selected from the Scope of Work and at the rates provided for therein. All work performed by CONSULTANT hereunder shall be performed to the satisfaction of the Director (the “**Director**”) of Neighborhood and Housing Services Department (“**NHSD**”). The determination made by the 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 the Director. CITY shall have the right to terminate this CONTRACT, in accordance with Article XXXI, in whole or in part, should CONSULTANT’s work not be satisfactory to the 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. CITY shall notify CONSULTANT in writing of any decision to withhold payment. Should CITY elect to terminate, it will do so in accordance with the provisions contained in this CONTRACT.

3.2 Unless written notification by CONSULTANT to the contrary is received and approved by CITY, the President shall be CONSULTANT’s designated representative responsible for the management of all contractual matters pertaining to this CONTRACT. The Director or her designee shall be CITY’s representative responsible for the administration of this CONTRACT. Communications to CITY and CONSULTANT shall be directed to each of their respective designated representatives as set forth in this Section 3.2.

IV. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

4.1 CONSULTANT understands that funds provided to it pursuant to this CONTRACT are funds which have been made available to CITY by the federal government and with other specific assurances made and executed by CITY. Therefore, CONSULTANT agrees and acknowledges that it will comply with all applicable LHRDG, CDBG, and HOME regulations, and all other Legal Requirements, including, but not limited to, the following:

- (A) Copeland “Anti-Kickback” Act, 18 U.S.C. § 874, which governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all CONSULTANTS to submit weekly payrolls and statements of compliance;
- (B) Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, which requires that CONSULTANT sign and submit an anti-lobbying certification and that sub-consultants that apply or bid for an award exceeding One Hundred Thousand and 00/100 Dollars (\$100,000.00) file the same certification;
- (C) 2 C.F.R. § 200.321, *Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms*, which requires that CONSULTANT take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible, with such affirmative steps to include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (vi) Requiring the prime CONSULTANT, if subcontracts are to be let, to take the affirmative steps listed in clauses (i) through (v) of this Section 4.1(T);
- (D) 24 C.F.R. § 570.604, *Environmental standards*;
 - (E) 24 C.F.R. § 570.602, *Section 109 of Title I of the Community and Housing Development Act of 1974*, which prohibits discrimination or exclusion of benefits in any program or activity funded in whole or in part with CDBG funds, and also incorporates the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1974;
 - (F) 24 C.F.R. § 570.608, *Lead-based paint*, which incorporates the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-4856, and the applicable implementing regulations;
 - (G) 24 C.F.R. § 570.611, *Conflict of interest*, which provides that no persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter;
 - (H) 24 C.F.R. § 570.614, which requires compliance with the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151-4157, and with the Americans with Disabilities Act (the "*ADA*"), 42 U.S.C. § 12131, 47 U.S.C. §§ 155, 201, 218, and 225;
 - (I) Title I and V of the ADA, which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;

- (J) Subject to 24 C.F.R. § 570.502, the provisions of 2 C.F.R. Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*;
- (K) 2 C.F.R. Part 2424, which prohibits the use of HUD funds either directly or indirectly to engage any CONSULTANT during any period of debarment, suspension or placement in ineligibility status;
- (L) Title VI of the Civil Rights Act of 1964 and the implementing regulations issued in 24 C.F.R. Part 1, as related to non-discrimination in federally-assisted programs;
- (M) Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- (N) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act);
- (O) National Historic Preservation Act of 1966, 54 U.S.C. § 300101, and the implementing regulations at 36 C.F.R. Part 800;
- (P) Equal Pay Act of 1963, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- (Q) Age Discrimination in Employment Act of 1967, which protects individuals who are forty (40) years of age or older from discrimination in employment;
- (R) Clean Air Act, 42 U.S.C. § 7401 *et seq.*;
- (S) Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*;
- (T) Drug-Free Workplace Act of 1988, 41 U.S.C. § 701, *et seq.*, and the implementing regulations at 2 C.F.R. Part 2429; and

4.2 CONSULTANT must at all times remain in compliance with the requirements set out in Section 4.1. CONSULTANT further understands that said requirements in Section 4.1 are summaries and are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon CONSULTANT by law or administrative ruling, or to narrow the standards which CONSULTANT must follow.

4.3 CONSULTANT assures that all sub-consultants, if any, receiving funds in connection with the Project are familiar with, and shall comply with, any and all applicable rules and regulations as contained in Section 4.1 and that CONSULTANT shall include Section 4.1 as part of every contract awarded in connection with the Project. Notwithstanding this provision, CONSULTANT may not sub-contract without the prior written approval of CITY.

4.4 CONSULTANT shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting CONSULTANT's operations pursuant to this CONTRACT.

V. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (CITY-SBEDA)

5.1 *Not applicable.*

VI. LEGAL AUTHORITY

6.1 CONSULTANT represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this CONTRACT and to perform the responsibilities herein required.

6.2 The signer of this CONTRACT for CONSULTANT represents, warrants, assures, and guarantees that he or she has full legal authority to execute this CONTRACT on behalf of CONSULTANT and to bind CONSULTANT to all terms, performances, and provisions herein contained.

6.3 In the event that a dispute arises as to the legal authority to enter into this CONTRACT of either the CONSULTANT or the person signing on behalf of CONSULTANT, CITY shall have the right, at its option, to either temporarily suspend or terminate this CONTRACT. If CITY suspends or terminates this CONTRACT for such reasons, CONSULTANT shall be liable to CITY for any funds CONSULTANT has received from CITY for performance of the Work under this CONTRACT.

VII. MAINTENANCE OF EFFORT

7.1 CONSULTANT agrees that the funds and resources provided to it under the terms of this CONTRACT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services, or other benefits which would have been available to, or provided through CONSULTANT had this CONTRACT not been executed.

VIII. PERFORMANCE OF WORK

8.1 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. CONSULTANT shall ensure that the Work performed shall be performed in accordance with Texas Department of State Health Services and in strict compliance with any other applicable local, state and federal regulations relating to lead, mold or asbestos. Only State certified/licensed personnel and firms, certified/licensed to perform inspections, assessments, reviews, reports pursuant to environmental activities for lead, mold and asbestos, shall perform all services required hereunder.

8.2 CONSULTANT understands that CONSULTANT's engagement pursuant to this CONTRACT involves the performance of the Work on an on-call, as-needed basis, and CONSULTANT expressly acknowledges and agrees that specific requirements as to types, number, locations, conditions, and procedures pertaining to the Work may be established or directed by the NHSD on a case-by-case basis for each Property.

8.3 CITY reserves the right, but does not assume the obligation, to have CONSULTANT's personnel removed from a Project who are not performing the services hereunder in a workmanlike and professional manner, or who are not performing the services in compliance with the applicable Legal Requirements.

8.4 Any and all writings, documents or information in whatsoever form and character produced by CONSULTANT pursuant to the provisions of this CONTRACT is the exclusive property of CITY without limitation; and no such writing, document or information shall be the subject of any

copyright or proprietary claim by CONSULTANT. 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.

8.5 At any time during the Project, CITY shall have the right to directly access and contact all laboratories and testing facilities used by CONSULTANT for Work performed under this CONTRACT and CITY, in its discretion, shall have the right to obtain original or duplicate copies of reports and testing results directly from the laboratory or testing facility used by CONSULTANT.

8.6 If CONSULTANT observes that the Scope of Work is at variance with applicable laws, rules, ordinances, and/or regulations bearing on the conduct of the Work, it shall promptly notify CITY's Department of Neighborhood and Housing Services in writing. Notwithstanding the foregoing, if CONSULTANT performs Work that it knows or reasonably should know is contrary to or varies from any applicable law, rule, ordinance and/or regulation, and does not have written approval from the Texas Department of State Health Services and the CITY to conduct such variance, CONSULTANT shall bear all costs and damages arising therefrom.

8.7 Prior to commencing Work pursuant to this CONTRACT, CONSULTANT shall submit evidence of CONSULTANT's state certification(s) and proof of the insurance coverage required by this CONTRACT.

8.8 CONSULTANT shall be a state certified firm and have the qualifications necessary to prepare inspections, assessments, reports, clearances, and Environmental Record Reviews to comply with state and federal requirements pertaining to lead, asbestos, and mold activities.

8.9 For all services and activities to be performed by CONSULTANT pursuant to this CONTRACT, CONSULTANT shall utilize Exhibit "A" attached hereto in order to determine the rate of compensation for the performance of inspections, assessments, reviews, reports pursuant to environmental activities, in or on any given Property.

8.10 Upon completion of the Work, CONSULTANT shall perform the necessary clearance requirements on the Property to ensure that the Property is cleared of all surplus material, hazards, waste, refuse, dirt and rubbish resulting from the Work performed hereunder and to ensure that clearances levels are within state and federal standards and regulations.

8.11 CITY reserves the right to have personnel removed from the Project or any Property who are not performing their services in a workmanlike and professional manner, and in accordance with state and federal standards and regulations.

IX. COMPENSATION

9.1 In consideration of CONSULTANT's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities requested by CITY under this CONTRACT, CITY agrees to pay Consultant an amount not to exceed **Seventy-five Thousand and No/100 Dollars (\$75,000.00)** as total compensation; said compensation to be paid to CONSULTANT at the rates specified for each service requested by CITY in accordance with Exhibit "A" attached hereto.

CONSULTANT understands and agrees that CITY does not guarantee any minimum amount of Work under this CONTRACT.

9.2 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 at the rates specified in Exhibit "A" attached hereto.

9.3 Final acceptance of work products and services require written approval by CITY. The approving official shall be the Director or her designee. Payment will be made to CONSULTANT following written approval of the final work products and services by Director or her designee. CITY shall not be obligated or liable under this CONTRACT to any party, other than CONSULTANT, for the payment of any monies or the provision of any goods or services.

9.4 It is expressly understood and agreed by CONSULTANT that CITY's obligations under this Article IX are contingent upon the actual receipt of adequate funds to meet CITY's liabilities hereunder. Should CITY not receive funds to make payments pursuant to this CONTRACT or should fund awards, including but not limited to Lead Hazard Reduction, Community Development Block Grant, HOME Investment Partnerships or general funds, be reduced, CITY shall notify CONSULTANT in writing within a reasonable time after such fact has been determined and CITY may, at its option, either terminate this CONTRACT or reduce the amount of its liability accordingly. It is expressly understood by CONSULTANT that this CONTRACT in no way obligates CITY's general fund monies or any other monies or credits of CITY, unless appropriated by City Council.

9.5 CITY shall not be liable for any portion of a CONSULTANT cost, which is or was incurred in connection with an activity of CONSULTANT where prior written authorization from CITY is required for the activity and such authorization was not first procured, or where CITY has requested that CONSULTANT furnish data concerning an activity prior to proceeding further therewith and CONSULTANT nonetheless proceeds without first submitting the data and receiving CITY's approval. Further, CITY shall not be liable for any CONSULTANT cost, or portion thereof, which: (A) has been paid, reimbursed, or is subject to payment or reimbursement from another source; (B) was incurred prior to the Effective Date or subsequent to the termination date of this CONTRACT; (C) is not in strict accordance with the terms of this CONTRACT, including all Exhibits attached hereto; (D) has not been billed to CITY within thirty (30) days following billing to CONSULTANT, or termination of this CONTRACT, whichever is earlier; or (E) is not an allowable cost under this CONTRACT. CITY shall not be obligated or liable under this CONTRACT to any party, other than CONSULTANT, for payment of any monies or provision of any goods or services.

9.6 If CITY elects to renew and extend this CONTRACT pursuant to Section 2.2, and subject to the appropriation and availability of funding for said purpose by City Council, CITY agrees to pay Consultant an amount not to exceed **Seventy-five Thousand and No/100 Dollars (\$75,000.00)** as total compensation during each respective renewal and extension period, with the aggregate of all compensation paid hereunder not to exceed **Two Hundred Twenty-five Thousand and No/100 Dollars (\$225,000.00)** should CITY exercise both of the options to renew and extend.

9.7 CONSULTANT understands and agrees that CITY may not exercise any option to renew and extend.

9.8 CONSULTANT further understands and agrees that CITY does not guarantee any minimum volume of work.

X. RECEIPT, DISBURSEMENT, AND ACCOUNT

OF FUNDS BY CONSULTANT

10.1 Regarding method of payment, CITY and CONSULTANT agree as follows:

- (A) CONSULTANT shall deliver invoices, in a form acceptable to CITY, to NHSD, which shall include, but is not limited to, the address of the Property at, on, or in which the service are rendered, line item of services, any applicable reports for such services and such other information as may be required by CITY;
- (B) CONSULTANT shall submit to CITY such other reports as may be required by CITY to document CITY liabilities under this CONTRACT; and
- (C) Upon receipt of and approval by CITY of each of CONSULTANT's invoices, CITY shall pay to CONSULTANT an amount equal to CITY's liabilities not previously billed to and subsequently paid by CITY, subject to deduction for any costs questioned or not allowable; *provided, however*, delinquent or unacceptable billing of CITY by CONSULTANT shall justify delay of payment by CITY.

10.2 Within ten (10) business days after receipt of CITY's written request, CONSULTANT shall refund to CITY any sum of money paid by CITY to CONSULTANT later determined to: (A) have resulted in overpayment to CONSULTANT; (B) have not been spent by CONSULTANT strictly in accordance with the terms of this CONTRACT; and/or (C) not be supported by adequate documentation to fully justify the expenditure.

10.3 Upon termination of this CONTRACT, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, HUD, or any other federal agency, CONSULTANT shall refund such amount to CITY within ten (10) business days of CITY's written request therefore wherein the amount disallowed or disapproved shall be specified. Refunds of disallowed or disapproved costs, however, shall not be made from funds received pursuant to this CONTRACT or from funds received from or through the federal government or CITY.

10.4 In the event that the actual amount expended by CONSULTANT to meet the level of performance specified in Exhibit "A" or elsewhere in this CONTRACT, or any amendment thereto, is less than that amount provided to CONSULTANT pursuant to this CONTRACT, then CITY reserves the right to re-appropriate or recapture any such under-expended funds.

XI. ALLOWABLE COSTS

11.1 Costs shall be considered allowable only if approved by CITY in writing prior to being incurred and incurred directly and specifically in the performance of and in compliance with this CONTRACT and with all Legal Requirements. Written requests for prior approval shall be CONSULTANT's responsibility and shall be made within sufficient time to permit a thorough review by CITY. Written approval by CITY must be obtained prior to the commencement of procedures to solicit or purchase services, equipment, or real or personal property. Procurements and/or purchases which must be approved pursuant to the terms of this CONTRACT shall be conducted entirely in accordance with all applicable terms, provisions, and requirements hereof.

11.2 CITY shall not be liable for any CONSULTANT cost, or portion thereof, which:

- (A) Has been paid, reimbursed or is subject to payment or reimbursement from another source;
- (B) Was incurred prior to the Effective Date or subsequent to the termination date of this CONTRACT;
- (C) Is not in strict accordance with the terms of this CONTRACT;
- (D) Has not been billed within thirty (30) calendar days following billing to CONSULTANT or termination of this CONTRACT, whichever is earlier;
- (E) Is not an allowable costs as defined herein;
- (F) Prior written authorization from CITY is required for the activity and such authorization was not first procured; or
- (G) CITY has requested that CONSULTANT furnish data concerning an activity prior to proceeding further therewith and CONSULTANT nonetheless proceeds without first submitting the data and receiving CITY approval thereof.

11.3 CITY shall not be obligated or liable under this CONTRACT to any party, other than CONSULTANT, for payment of any monies or provision of any goods or services.

XII. HUD SECTION 3

12.1 If CITY early exercises a renewal option such that the value of this CONTRACT exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00) in a one (1) year period, CONSULTANT understands and agrees to comply with the following federal regulations as promulgated in the Section 3 clause of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (“**Section 3**”), and if requested by CITY, shall provide CITY with the information requested in the Section 3 Utilization Plan, which is available at the following url: www.sanantonio.gov/GMA/Resources.aspx:

- (A) CONSULTANT agrees to comply with HUD’s regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by CONSULTANT’s execution of this Agreement, CONSULTANT certifies that CONSULTANT is under no contractual or other impediment that would prevent it from complying with the Part 135 regulations.
- (B) CONSULTANT agrees to send to each labor organization or representative of workers with which CONSULTANT has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the CONSULTANT’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (C) On and after the Effective Date of this Agreement, CONSULTANT agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided

in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. CONSULTANT will not subcontract with any subcontractor where the CONSULTANT has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

- (D) CONSULTANT will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the CONSULTANT's obligations under 24 C.F.R. Part 135.
- (E) Non-compliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this CONTRACT for default, and debarment or suspension from further HUD-assisted contracts.
- (F) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (24 U.S.C. § 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. CONSULTANT agrees to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

XIII. FURTHER REPRESENTATIONS AND WARRANTIES

13.1 In addition the representations and warranties set forth elsewhere in this CONTRACT, CONSULTANT further represents and warrants that:

- (A) All information, data, or reports heretofore or hereafter provided to CITY are, shall be and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
- (B) Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate, and reflective of the financial condition of CONSULTANT on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of CONSULTANT;
- (C) No litigation or proceedings are presently pending or threatened against CONSULTANT and CONSULTANT has no information or cause to believe that litigation or proceedings, whether judicial or administrative against CONSULTANT is imminent;
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which CONSULTANT is doing business or with the provisions of any existing indenture or agreement of CONSULTANT;

- (E) CONSULTANT has the legal authority to enter into this CONTRACT and accept payments hereunder, and has taken all necessary measures to authorize such execution of the CONTRACT and acceptance of payments pursuant to the terms and conditions hereof; and
- (F) None of the assets of CONSULTANT are both currently and for the duration of this CONTRACT subject to any lien or encumbrance of any character, except for current taxes not delinquent and except as shown in the financial statements provided by CONSULTANT to CITY.

13.2 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. By executing this CONTRACT, CONSULTANT hereby verifies that it does not boycott Israel, and will not boycott Israel during the Term of this CONTRACT. For purpose of this representation, "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. CONSULTANT's verification is a material representation of fact upon which the CITY has relied in entering into this CONTRACT. Should CITY determine, at any time during this CONTRACT, including any renewals or extensions hereof, that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this CONTRACT in accordance with Article XXXI.

13.3 Texas Government Code § 2252.152 provides that a governmental entity may not enter into a governmental contract that is identified on a list prepared and maintained under Texas Government Code §§ 806.051, 807.051, or 2252.153. By executing this CONTRACT with CITY, CONSULTANT hereby certifies that is not identified on such a list and that it will notify CITY should it be placed on such a list while under contract with CITY. CITY hereby relies on CONSULTANT's certification. If found to be false, CITY may terminate this CONTRACT for material breach.

XIV. MAINTENANCE OF RECORDS

14.1 CONSULTANT shall maintain all records required by the federal regulations specified in 24 C.F.R. § 570.506 that are pertinent to the activities to be funded under this CONTRACT, including, but not limited to: (A) records providing a full description of each activity undertaken; (B) records demonstrating that each activity undertaken meets one of the national objectives of the Office of Healthy Homes and Lead Hazard Control, the CDBG Program or HOME program; (C) records required to determine the eligibility of activities; (D) records required to document the acquisition, improvement, use or disposition of real property acquired or improved with assistance hereunder; (E) records documenting compliance with the fair housing and equal opportunity components of the federal programs; (F) financial records in accordance with the applicable requirements listed in 24 C.F.R. § 570.502; and (G) other records necessary to document compliance with Subpart K of 24 C.F.R. Part 570.

14.2 CONSULTANT shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the CONTRACT for a period of five (5) years. The retention period begins on the date of the submission of CITY's annual performance and evaluation report to HUD in which the activities assisted under this CONTRACT are reported on for the final time. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five (5) year period, then such records must

be retained until completion of the actions and resolution of all issues, or the expiration of the five (5) year period, whichever occurs later.

14.3 Nothing in this Article XIV shall be construed to relieve CONSULTANT of: (A) responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this CONTRACT; and (B) fiscal accountability and liability pursuant to this CONTRACT and any applicable rules, regulations, and laws.

14.4 CONSULTANT agrees to include the substance of this Article XIV in all of its subcontracts.

XV. ACCESSIBILITY OF RECORDS

15.1 At any reasonable time and as often as CITY may deem necessary, CONSULTANT shall make all of its records available to CITY, HUD, or any of their authorized representatives, and shall permit CITY, HUD, or any of their authorized representatives to audit, examine, and make excerpts and/or copies of same. CONSULTANT's records shall include, but shall not be limited to, the following: reports, test results, laboratory results, field notes, and other data.

XVI. PERFORMANCE RECORDS AND REPORTS

16.1 As often and in such form as CITY may require, CONSULTANT shall furnish CITY performance records and reports as deemed by CITY as pertinent to the matters covered by this CONTRACT.

XVII. MONITORING AND EVALUATION

17.1 CONSULTANT agrees that CITY may carry out monitoring and evaluation activities so as to ensure compliance by CONSULTANT with this CONTRACT and all applicable Legal Requirements. CONSULTANT agrees to cooperate fully with CITY in the development, implementation, and maintenance of record-keeping systems and to provide CITY with any data determined by CITY to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities. CONSULTANT agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in CITY's monitoring of CONSULTANT's performance and that CONSULTANT will designate one of its staff to coordinate the monitoring process as requested by CITY's staff.

17.2 After each official monitoring visit, CITY shall provide CONSULTANT with a written report of monitoring findings. Copies of any fiscal, management, or audit reports by any of CONSULTANT's funding or regulatory bodies shall be submitted to CITY within five (5) business days of receipt thereof by CONSULTANT.

XVIII. INSURANCE

18.1 CONSULTANT agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of the Work, CONSULTANT shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to CITY's Neighborhood and Housing Services Department, which shall be clearly labeled with the Consultant's name and "GHHI and Rehabilitation" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a

person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements directly from the insurer's authorized representative to CITY. CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by NHSD. No officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.

- (B) CITY reserves the right to review the insurance requirements of this Article XVIII during the term of this CONTRACT and any extension 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 CONTRACT. In no instance will CITY allow modification whereby CITY may incur increased risk.
- (C) CONSULTANT's financial integrity is of interest to CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, 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 amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Environmental Insurance-Contractor's Pollution Liability (claims-made coverage)	For Bodily Injury and Property Damage \$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	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (claims-made basis)	\$1,000,000 per claim by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

- (D) CONSULTANT agrees to require, by written contract, that all sub-consultants providing goods or services hereunder obtain the same categories of insurance coverage required of

CONSULTANT herein, and provide a certificate of insurance and endorsement that names CONSULTANT and CITY as additional insureds. Policy limits of the coverages carried by sub-consultants will be determined as a business decision of CONSULTANT. CONSULTANT shall provide CITY with said certificate and endorsement prior to the commencement of any Work by the sub-consultant. 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 CONTRACT. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.

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

City of San Antonio
Neighborhood and Housing Services Department
Attention: Director
1400 S. Flores
San Antonio, Texas 78204

- (F) CONSULTANT agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- (i) Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, with respect to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
 - (ii) Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy;
 - (iii) Workers' compensation and employers' liability, general liability and automotive liability policies will provide a waiver of subrogation in favor of CITY; and
 - (iv) Provide advance written notice directly to CITY of any suspension, or non-renewal in coverage, and not less than ten (10) days advance notice for nonpayment of premium.
- (G) Within five (5) 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 CONTRACT.

- (H) In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop the Work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- (I) Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its sub-consultants' performance of the Work covered under this CONTRACT.
- (J) CONSULTANT understands and agrees that its insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by CITY for liability arising out of the activities under this CONTRACT.
- (K) CONSULTANT understands and agrees that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.
- (L) CONSULTANT and any sub-consultants are responsible for all damage to their own equipment and/or property.

XIX. INDEMNIFICATION

19.1 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, contractor 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.

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 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.

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.

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.

XX. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

20.1 During the performance of this CONTRACT, CONSULTANT agrees as follows:

- (A) CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (B) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (C) CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information.

- (D) CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (E) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (F) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to CONSULTANT's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (G) In the event of CONSULTANT's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of the said rules, regulations, or orders, this CONTRACT may be canceled, terminated, or suspended in whole or in part and CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (H) CONSULTANT will include the portion of the sentence immediately preceding Section 20.1(A) and the provisions of Section 20.1(A) through this Section 20.1(H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-consultant or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or vendor as a result of such direction by the administering agency the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

20.2 CONSULTANT shall comply with all other applicable local, state and federal equal employment opportunity and affirmative action rules, regulations and laws. So that CITY can investigate compliance with local, state and federal equal employment opportunity and affirmative action rules, regulations and laws, CONSULTANT shall furnish to CITY any and all information and reports requested by CITY, and shall permit access by CITY of any and all of its books, records, and accounts.

20.3 In the event of non-compliance by CONSULTANT (or CONSULTANT's sub-consultants) with local, state and federal equal employment opportunity and affirmative action rules, regulations and laws, this CONTRACT may be canceled, terminated, or suspended by CITY, in whole or in part, and CONSULTANT may be barred from further contracts with CITY.

XXI. NONDISCRIMINATION

21.1 CONSULTANT covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises at, in or on which the Project and the Work is to be performed.

XXII. CONFLICTS OF INTEREST

22.1 CITY's Charter and Ethics Code prohibit a CITY officer or employee, as those terms are defined in CITY's Ethics Code, from having a financial interest in any contract with CITY or any agency of CITY, such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies, or service, if any of the following individual(s) or entities is a party to such contract or sale: a CITY officer or employee; his or her parent, child or spouse; a business entity in which the officer or employee or his or her parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; a business entity of which any individual or entity above listed is a sub-consultant on a CITY contract, a partner or a parent or subsidiary business entity.

22.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees, and agents performing on this CONTRACT are neither a CITY officer nor an employee as defined by Section 2-52(f) of CITY's Ethics Code. CONSULTANT further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.

XXIII. POLITICAL AND SECTARIAN ACTIVITIES

23.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state, or federal legislation.

23.2 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operation, maintenance, or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received by utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXIV. PUBLICITY

24.1 When appropriate, as determined by and upon written approval of CITY, CONSULTANT shall publicize the activities conducted by CONSULTANT pursuant to the terms of this CONTRACT. In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for CONSULTANT, however, mention shall be made that the Project was made possible with HUD funding and CITY participation.

XXV. PUBLICATIONS

25.1 All published materials and written reports submitted pursuant to this CONTRACT shall be originally developed unless otherwise specifically provided for herein. If material not originally developed is included in a report, however, said material shall have its source identified, either in the body of the report or by footnote, regardless of whether the material is in a verbatim or extensive paraphrase format.

XXVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

26.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by CONSULTANT, shall, upon receipt, become the property of CITY.

XXVII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

27.1 CONSULTANT certifies, and the CITY relies thereon in execution of this CONTRACT, that neither CONSULTANT nor its Principals (defined below) are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any federal governmental agency or department. “*Principals*,” for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions).

27.2 If at any time during the term of this CONTRACT, CONSULTANT learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances, CONSULTANT shall provide immediate written notice to CITY.

27.3 CONSULTANT’s certification is a material representation of fact upon which the CITY has relied in entering into this CONTRACT. Should CITY determine, at any time during this CONTRACT that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this CONTRACT in accordance with Article XXXI.

XXVIII. SUBCONTRACTING

28.1 Notwithstanding anything to the contrary in this CONTRACT, none of the Work performed under this CONTRACT shall be sub-contracted without the prior written approval of CITY. Any Work approved by CITY for sub-contracting shall be only by written agreement and, unless specific waiver is granted in writing by CITY, shall be subject to each and every provision of this CONTRACT. Compliance by sub-consultants with this CONTRACT shall be the responsibility of CONSULTANT.

28.2 CONSULTANT shall ensure that all sub-consultants are certified, licensed, reputable, and competent. CONSULTANT shall provide to CITY copies of all certificates and licenses of its employees, sub-consultants, and their employees who will be performing Work which requires a certificate or license under applicable law. Such certificates and licenses shall provide the name of the worker and the certificate or license number.

28.3 CONSULTANT agrees that no sub-contract approved pursuant to this CONTRACT shall provide for payment on a “cost plus a percentage of cost” basis.

XXIX. CHANGES AND AMENDMENTS

29.1 Except when the terms of this CONTRACT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT; *provided, however*, the parties agree that applicable changes in local, state and federal

rules, regulations or laws shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

29.2 In the event that the level of funding for CONSULTANT or for the projects described herein is reduced, CITY agrees to notify CONSULTANT and the parties may agree to amend to reflect the reduced amount or if no agreement is reached, terminate the CONTRACT.

29.3 If CITY exercises an option to renew and extend pursuant to Section 2.2, the Parties agree to execute an amendment to this CONTRACT that reflects the extended term and funding the renewal period. No further City Council action or approval is required for such an amendment.

XXX. SUSPENSION OF FUNDING

30.1 Upon the occurrence of any of the following events (each, an “*Event of Default*”), CITY, without limiting or waiving any rights it may otherwise have, may, at its discretion, withhold further payments to CONSULTANT by providing CONSULTANT five (5) business days’ written notice specifying the alleged default or failure as well as the action required for cure thereof, if any:

- (A) Neglect or failure by CONSULTANT to perform or observe any of the terms, conditions, covenants or guarantees of this CONTRACT or any other valid, written contract or amendment between CITY and CONSULTANT;
- (B) Finding by CITY that CONSULTANT is in such unsatisfactory financial condition as to endanger performance under this CONTRACT, including, but not limited to:
 - (i) Apparent inability of CONSULTANT to meet its financial obligations;
 - (ii) Appearance of items that reflect detrimentally on the creditworthiness of CONSULTANT, including, but not limited to, liens, encumbrances, etc., on the assets of CONSULTANT; or
 - (iii) CONSULTANT is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this CONTRACT;
- (C) Appointment of a trustee, receiver or liquidator for all or a substantial part of CONSULTANT’s property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against CONSULTANT;
- (D) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of CONSULTANT’s creditors; or
- (E) Violation by CONSULTANT of any legal requirement to which CONSULTANT is bound or shall be bound under the terms of this CONTRACT.

30.2 Upon occurrence of an Event of Default, CITY shall grant CONSULTANT such period of time as CITY, in its sole discretion, deems appropriate to take and complete corrective action, but such period of time shall not exceed ten (10) days to correct monetary Events of Default and thirty (30) days to correct non-monetary Events of Default unless otherwise agreed by CITY. At the end of the applicable remedial period, if any, CITY shall review CONSULTANT’s effort to correct the Event of Default. Upon expiration of the suspension period: (A) Should CITY determine that the Event of Default has been cured, CONSULTANT may be restored to full compliance status and paid all eligible funds withheld

during the suspension period; or (B) Should CITY determine continued non-compliance, the termination provisions of Article XXXI may be effectuated.

XXXI. TERMINATION

31.1 If an Event of Default specified in Section 30.1 continues beyond any applicable notice and cure period (if any), CITY may immediately terminate this CONTRACT for cause by providing written notice to CONSULTANT.

31.2 Notwithstanding anything to the contrary in this CONTRACT, CITY may terminate this CONTRACT for convenience at any time, in whole or in part, if CITY determines that continuation of this CONTRACT is not in CITY's interest. CITY shall provide CONSULTANT at least ten (10) days' advance written notice prior to termination under this Section 31.2; *provided, however*, termination shall be effective immediately upon CITY providing notice to CONSULTANT if termination is due to the reduction or termination by HUD of funds allocated for the Project, CONSULTANT's use of the funds provided hereunder to pay direct or indirect costs or attorneys' fees in any adversarial proceeding against CITY, CONSULTANT's unauthorized subcontracting of the Work or assignment of this Agreement, or debarment of CONSULTANT under any debarment policy currently existing or later adopted.

31.3 Upon termination of this CONTRACT, CONSULTANT shall be entitled to receive just and equitable compensation for any Work satisfactorily completed in accordance with this CONTRACT prior to the termination date. The question of satisfactory completion of such Work shall be determined by the CITY alone, and its decision shall be final.

31.4 CONSULTANT may terminate this CONTRACT for any of the following reasons: (A) cessation of outside funding upon which CONSULTANT depends for performance hereunder; or (B) upon the dissolution of CONSULTANT's organization, provided such dissolution was not occasioned by a breach of this CONTRACT.

31.5 Upon a decision to terminate by either CITY or CONSULTANT, the terminating party shall promptly provide written notice to the other party with the effective date of termination. Upon receipt of a termination notice from CITY or determination by CONSULTANT to terminate this CONTRACT, CONSULTANT shall immediately cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this CONTRACT. CITY shall not be liable to CONSULTANT for any expense, encumbrances, or obligations whatsoever incurred after the date of termination.

31.6 Upon receipt of notice to terminate, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of CONSULTANT under this CONTRACT shall, at the option of CITY, and in accordance with Article XXVI, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by CONSULTANT to CITY in a timely and expeditious manner.

31.7 Within thirty (30) days after the termination date, CONSULTANT shall submit a statement to CITY, indicating in detail the Work performed under this CONTRACT prior to the effective date of termination.

31.8 Termination of this CONTRACT shall not relieve CONSULTANT from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, or any claim for damages then or theretofore accruing against

CONSULTANT hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for damages from CONSULTANT. Instead, all rights, options, and remedies of CITY contained in this CONTRACT shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this CONTRACT.

31.9 Notwithstanding anything to the contrary in this CONTRACT, if CONSULTANT'S Work is not fully completed to the satisfaction of CITY in accordance with the terms of this CONTRACT, CONSULTANT shall refund any and all sums of money paid by CITY to CONSULTANT within ten (10) business days of its receipt of CITY's written request.

31.10 Upon termination of this CONTRACT by CITY under Section 30.1(A), CONSULTANT shall be barred from future CONTRACTS with CITY absent the express written consent of CITY's City Manager or her designee.

XXXII. NOTIFICATION OF ACTION BROUGHT

32.1 In the event that any claim, demand, suit, proceeding, cause of action or other action (collectively, a "***Claim***") is made or brought against CONSULTANT, CONSULTANT shall give written notice thereof to CITY within two (2) business days after itself being notified. CONSULTANT's notice to CITY shall state the date and hour of notification to CONSULTANT of the Claim; the names and addresses of those instituting or threatening to institute the Claim, the basis of the Claim; and the name(s) of any others against whom the Claim is being made or threatened.

XXXIII. ASSIGNMENTS

33.1 CONSULTANT shall not transfer, pledge, or otherwise assign this CONTRACT, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt at transfer, pledge, or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XXXIV. LEGAL EXPENSES

34.1 Under no circumstances will the funds received under this CONTRACT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY or any other public entity. For purposes of this Article XXXIV, "***adversarial proceeding***" means any cause of action filed by the CONSULTANT in a state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

34.2 CITY may terminate this CONTRACT if CONSULTANT files and/or pursues an adversarial proceeding against CITY. CITY may also deem CONSULTANT ineligible for consideration to receive any future funding while any adversarial proceeding against CITY remains unresolved.

XXXV. SEVERABILITY

35.1 If any clause or provision of this CONTRACT is held invalid, illegal, or unenforceable under present or future federal, state or local laws, including but not limited to the CITY's Charter, Code, or ordinances, 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 CONTRACT 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 CONTRACT that is invalid, illegal, or unenforceable, there be added as a part of the CONTRACT 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.

XXXVI. RENEWAL NOT AUTOMATIC

36.1 Funding under this CONTRACT and any amendments or waivers that may be made or granted hereunder shall not be automatically renewed on the anniversary date of this CONTRACT.

XXXVII. NON-WAIVER OF PERFORMANCE

37.1 No waiver by CITY of a breach of any of the terms, conditions, covenants, or guarantees of this CONTRACT shall 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 CITY to insist in any one or more cases upon the strict performance of any of the covenants of this CONTRACT, 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. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby. No representative or agent of CITY may waive the effect of the provisions of this Section 37.1.

XXXVIII. ENTIRE CONTRACT

38.1 This CONTRACT, including all Exhibits, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same are in writing, dated subsequent to the Effective Date, and duly executed by both parties.

XXXIX. INTERPRETATION

39.1 When a reference is made in this CONTRACT to an Article, Section, or Exhibit, such reference will be to an Article, Section, or Exhibit of this CONTRACT unless otherwise indicated. When a reference is made to this CONTRACT in this CONTRACT, such reference will be to this CONTRACT and the Exhibits attached hereto, as this CONTRACT and the Exhibits may be amended from time to time in accordance with Article XXIX. The headings in this CONTRACT are for reference only and shall not affect the interpretation of this CONTRACT. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders and singular nouns used herein shall include the plural and vice versa. In the event any disagreement or dispute should arise between the parties pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible to HUD for matters of compliance, shall have the final authority to render or secure an interpretation.

XL. NOTICES

40.1 All notices, demand, requests, and other communications hereunder shall be in writing and shall be deemed to have been given: (A) when delivered by hand (with written confirmation of receipt); (B) one (1) business day after being sent by reputable private courier service for next business day delivery (receipt requested); or (C) two (2) business days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested. A party's rejection or other

refusal of a notice, demand or request submitted by the other party, or the inability to deliver such communications because of changed address of which no notice was given as herein required, shall be deemed to be receipt of the notice, demand or request sent. All notices, demands, requests or other communications to be sent to a party must be sent to or made at the address set forth below or at such other address as such party may specify by providing at least ten (10) days' prior written notice thereof to the other party in accordance with this Section 40.1.

If to CITY:

Neighborhood and Housing Services Department
Attention: Director
1400 S. Flores
San Antonio, Texas 78204

If to CONSULTANT:

Attention: _____

XLI. PARTIES BOUND

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

XLII. RELATIONSHIP OF PARTIES

42.1 CONSULTANT is an independent contractor and is not an employee, servant, agent, partner or joint venturer of CITY. CITY is interested only in the results achieved by the services of the CONSULTANT, and the manner of legally achieving those results is the responsibility of the CONSULTANT. CITY is not responsible for deducting, and shall not deduct, from payments to CONSULTANT any amounts for withholding tax, FICA, insurance or other similar item relating to CONSULTANT or CONSULTANT's employees. Neither CONSULTANT nor its employees shall be entitled to receive any benefits which employees of CITY are entitled to receive and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or social security on account of their work for CITY.

XLIII. TEXAS LAW TO APPLY

43.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE OF TEXAS AND COURTS LOCATED IN BEXAR COUNTY, TEXAS AND AGREE THAT VENUE IS PROPER THEREIN, WITH RESPECT TO ANY DISPUTE, CLAIM, CAUSE OF ACTION OR THE LIKE ARISING FROM OR OUT OF THIS CONTRACT OR ANY RELATED CONTRACT, ARRANGEMENT OR UNDERSTANDING.

XLIV. COUNTERPARTS

44.1 This CONTRACT may be executed in any number of multiple counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. Each such counterpart

shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or other electronic transmission of any signed original document or retransmission of any signed facsimile or other electronic transmission will be deemed the same as delivery of an original.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned parties have executed this CONTRACT on the dates shown below to be effective as of the date last shown below (the “*Effective Date*”).

CITY OF SAN ANTONIO,
a Texas municipal corporation

_____,
a _____

By: _____
LORI HOUSTON
Assistant City Manager

By: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
SCOTT ZIMMERER
Assistant City Attorney

Attachment:

Exhibit “A” – 2019 Consultant Fixed Cost List (rev. 05/22/19)