

ORDINANCE 2019-06-13-0489

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC. IN AN AMOUNT NOT TO EXCEED \$1,072,373.53 FOR SERVICES RELATED TO A PRELIMINARY ENGINEERING REPORT (PER) AND PLANS, SPECIFICATIONS AND ESTIMATE (PS&E) FOR THE SOUTH GEVERS STREET DRAINAGE IMPROVEMENT PROJECT, A STORM WATER REVENUE BOND PROJECT, LOCATED IN COUNCIL DISTRICT 3. FUNDS ARE AVAILABLE FROM THE STORM WATER OPERATING FUND AND OTHER DEBT PROCEEDS INCLUDED IN THE 2019-2024 CAPITAL IMPROVEMENT BUDGET.

* * * * *

WHEREAS, the community surrounding the South Gevers Street from Steves Avenue to Fair Avenue area has been reporting street and structural flooding issues for many years, and alleviating these issues will require a combination of street reconstruction, underground storm drains and possibly detention basins; and

WHEREAS, on May 9, 2017, three (3) Requests for Qualifications (RFQs) were released to seek professional design services in connection with the 2017 Bond Program, specifically: 1) Civil Engineering, 2) Architecture and 3) Landscape Architecture and RFQs were advertised on the City's website, the Texas Electronic State Business Daily, TVSA Channel 21, in the San Antonio Hart Beat, Express News, La Prensa, San Antonio Observer and Southside Reporter; and

WHEREAS, in June 2017, 122 eligible Statements of Qualifications (SOQs) were received, evaluated and scored by city department experts from TCI, Parks and Recreation, Library, Human Services, Sustainability and Economic Development as well as experts from SAWS, CPS, a Parks and Recreation Advisory Board member and an American Institute of Architects (AIA) representative and the Request for Qualifications allowed for TCI to choose these firms to provide engineering services for additional projects that were identified; and

WHEREAS, this contract will be awarded in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts to be reviewed by a Goal Setting Committee (GSC) to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority and woman-owned business participation under the contract; and

WHEREAS, on April 10, 2017, the Goal Setting Committee applied the Emerging, Small and Minority/Women-Owned Business Enterprise Prime Contract Program with a potential total of 12 prime points as part of the submittal evaluation criteria with 5 points for Small Business Enterprise (SBE), 5 points for Minority/Women-Owned Business Enterprise and 2 points for Emerging Small Business Enterprise (ESBE). Additionally, the Goal Setting Committee also applied aspirational subcontracting goals at 30% SBE, 20% M/WBE and 3% AABE (African American Business Enterprise) and requires that on certain pre-selected projects the awarded prime consultants become mentors in the City's Mentor Protégé Program; **NOW THEREFORE**,

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

SECTION 1. The City Manager or designee is authorized to execute a Professional Services Agreement with HDR Engineering, Inc. in a total amount not-to-exceed \$1,072,373.53. A copy of the Professional Services Agreement is attached hereto and incorporated herein for all purposes as Attachment I.

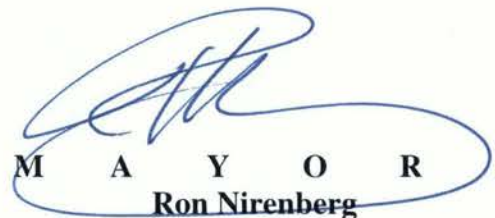
SECTION 2. Payment is authorized to be encumbered and made payable to HDR Engineering Inc. for services related to a Preliminary Engineering Report and Plans, Specifications, and Estimate (PS&E) for the South Gevers Street Drainage Improvement Project in the amount not to exceed \$1,072,373.53 in Fund 40099000, WBS Element 23-03757-05-02-01, and GL 5201140.

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

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Number, 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 affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

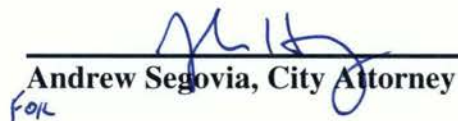
PASSED and APPROVED this 13th day of June, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney
for

Agenda Item:	14 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21A, 21B, 22, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 48, 50, 51A, 51B, 52)
Date:	06/13/2019
Time:	10:10:52 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a Professional Service Agreement with HDR Engineering, Inc. in an amount not to exceed \$1,072,373.53 for services related to a Preliminary Engineering Report (PER) and Plans, Specifications and Estimate (PS&E) for the South Gevers Street Drainage Improvement Project, a Storm Water Revenue Bond Project, located in Council District 3. Funds are available from the Storm Water Operating Fund and other debt proceeds included in the 2019-2024 Capital Improvement Budget. [Roderick Sanchez; Assistant City Manager; Razi Hosseini, Interim Director, Transportation & Capital Improvements]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor	x					
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				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

PROFESSIONAL SERVICES AGREEMENT

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

CIVIL ENGINEERING DESIGN SERVICES FOR THE S. GEVERS STREET DRAINAGE IMPROVEMENTS PROJECT

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

HDR Engineering, Inc.

613 NW Loop 410

San Antonio, TX 78216

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

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ARTICLE I. DEFINITIONS

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

- I.1 **"AGREEMENT"** is this written document signed by City and Consultant, including any other document itemized and expressly referenced in, or attached to, and expressly made part of this Agreement, to include Consultant's proposal, to the extent accepted by City and not in conflict with the **ARTICLES** of this Agreement: Scope of Services/Schedule of Project Services/Fee Summary – **EXHIBIT A**; Subconsultant/Supplier Utilization Plan, Change of Utilization and SBEDA Ordinance Compliance and Provision - **EXHIBIT B**; General Conditions for City of San Antonio - **EXHIBIT C**; Certificate of Interested Parties - **EXHIBIT D**; Addendum – **EXHIBIT E**.
- I.2 **"APPLICATION FOR COMPENSATION"** means written form for a request from Consultant to be paid for completed work.
- I.3 **"AMENDMENT"** is a written modification of the Contract prepared by City or Consultant and signed by City and Consultant (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Scope of Services or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.
- I.4 **"CCMS"** means City's Contract Management System whereby payments made by Consultants to, and confirmed by, Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.
- I.5 **"CITY"** means City of San Antonio, Texas.
- I.6 **"CLAIM"** is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money and/or extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between City and Consultant arising out of, or relating to, this Agreement.
- I.7 **"COMPENSATION"** means amounts paid for services under this Agreement.
- I.8 **"CONSULTANT"** means **HDR Engineering, Inc.** and its officers, partners, employees, agents and representatives, and all Sub-Consultants, if any, as well as all other persons or entities for which Consultant legally is responsible.
- I.9 **"DIRECTOR"** means the Director of City's Transportation and Capital Improvements Department (hereafter referred to as "TCI") or his/her designee.

- I.10 "OWNER DESIGNATED REPRESENTATIVE (ODR)"** means a person designated by City to act for City.
- I.11 "PLANS AND SPECIFICATIONS"** means the construction documents.
- I.12 "PRIME~~LINK~~"** means City's internet-based, project management software for approving Task Orders and Applications for Compensation.
- I.13 "PROJECT"** means the capital improvement/construction development undertaking of City.
- I.14 "PROPOSAL"** means Consultant's Proposal to provide services for this Project.
- I. 15 "PROPOSED TASK ORDER REQUEST"** means a request to Consultant to submit a Proposal for a specific Project as further defined herein.
- I.16 "SAMSA"** means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.
- I.17 "PROJECT MANAGEMENT TEAM"** means the assigned City staff overseeing the management of the Project. The Project Management Team typically includes a Project Manager and his or her staff.
- I.18 "DESIGN GUIDANCE MANUAL (DGM)"** means the document that instructs design engineers on the procedures and formats to be followed in the design of capital improvement projects for the City of San Antonio. The DGM provides minimum standards for the project development process and deliverables.

END OF ARTICLE I

ARTICLE II. COMPENSATION

II.1 The Compensation for all services included in this Agreement and in the Scope of Services for this Agreement shall not exceed as reflected in **EXHIBIT A**. The amount to be paid to Consultant, including authorized adjustments, is the total amount payable by City to Consultant for performance of the Services under this Agreement. It is agreed and understood such amount shall constitute full compensation to Consultant for Services included in the Scope of Services and shall meet all applicable requirements of City's Design Guidelines. Unless and until City makes further appropriations for any additional services not included in the Scope of Services of this Agreement, the obligation of City to Consultant for Compensation in connection with this Agreement cannot and shall not exceed such sum of **EXHIBIT A** without further amendment to this Agreement.

II.2 REIMBURSABLE EXPENSES

When authorized by City in writing, the Consultant shall be entitled to reimbursement at actual incurred cost for services and related expenses for the following items:

II.2.1 Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under the Agreement. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all reimbursable charges. Travel expenses, if any, shall be negotiated with each Task Order issued. City does not pay for Consultant's travel within SAMSA.

II.2.2 Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under **ARTICLE IV** of this Agreement. These costs, if any, shall not exceed the amount noted in Article IV herein, without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City.

II.2.3 Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under **ARTICLE IV** of this Agreement. These costs shall not exceed the amount noted in **ARTICLE IV** without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City.

II.2.4 City does not allow a markup on any of the above reimbursable items and only shall reimburse approved hard costs incurred.

II.2.5 SUB-CONSULTANT WORK

City shall not pay a markup to Consultant for Sub-Consultant work. However, for additional services performed by Sub-Consultants as a direct pass through, Consultants are permitted up to a 5% markup for Sub-Consultant management costs subject to approval by the City.

END OF ARTICLE II

ARTICLE III. METHOD OF PAYMENT

III.1 Payments to Consultant shall be in the amount shown on the invoices and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed in accordance with the professional standard of care set forth in **ARTICLE XX.1** and to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which previously have not been approved by the Director. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

III.1.1 Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Compensation for Additional Professional Services (attached hereto, incorporated by reference herein and labeled as "**EXHIBIT A**").

III.1.2 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, with all required back-up, within **PRIMELink**. The invoice shall indicate the value of the additional services performed to date.

III.2 Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants, in connection with the Project and the performance of the work, and shall provide City with evidence of such payment through City's electronic Contract Management System ("CCMS"). Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid Sub-Consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the Sub-Consultants as are applicable to Consultant hereunder, and shall require Sub-Consultants to provide confirmation to City of receipt of payments through CCMS. If Consultant has failed to make payment promptly to the Sub-Consultant for the Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City except in the event of a valid dispute between Consultant and that Sub-Consultant.

III.3 Consultant warrants title to all Services covered by an Application for Payment shall pass to City no later than the time of payment. Consultant further warrants, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED**

BY PAYMENTS MADE BY CITY TO CONSULTANT.

III.4 Consultant may submit a request for Partial Compensation prior to the completion of services. A request for Partial Compensation must be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report and approved by the City. Partial payments are subject to the following:

III.4.1 Prior to submittal of the current design phase, partial payments cannot exceed 70% of the allocated fee for the current design phase.

III.4.2 Upon submittal of the current design phase, partial payment may be requested up to 90% of the allocated fee for the current design phase.

III.4.3 100% of the allocated fee for the current design phase may be requested upon approval of that design phase.

Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each Service/Project, as may be described in fee schedule and/or hourly rates included in "EXHIBIT A" hereto.

III.5 Project Close Out and Final Payment:

III.5.1 Final billing shall indicate "Final Bill - no additional compensation is due to Consultant".

III.5.2 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

- a. Delays in the performance of Consultant's work;
- b. Third-party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to City is provided by Consultant;
- c. Failure of Consultant to make payments properly to Sub-Consultants or vendors for labor, materials or equipment;
- d. Reasonable evidence Consultant's work cannot be completed for the amount unpaid under this Agreement;
- e. Damage to City; or

- f. Persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

III.5.3 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within a reasonable time. City shall not be deemed in default by reason of withholding compensation as provided for in this **ARTICLE III**.

- a. In the event of any dispute(s) between the Parties, regarding the amount properly compensable for any Phase or as final compensation, or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- b. City shall make final compensation of all sums due Consultant not more than thirty (30) calendar days after Consultant's execution and delivery of a final Pay Application.
- c. Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.
- d. Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services or the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

III.5.4 INTERNET-BASED PROJECT MANAGEMENT SYSTEM

City shall administer its services through an Internet-Based Project Management System (hereafter referred to as "PRIMELink"). In such case, Consultant shall conduct communication through PRIMELink and perform all Project-related functions utilizing PRIMELink, with the exception of Sub-Consultant payment monitoring activities through CCMS. This includes correspondence, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and other administrative activities. City shall administer the PRIMELink software, shall provide PRIMELink training to Project Team Members and shall make the software accessible via the Internet to all

necessary Project Team Members. All invoices shall be submitted through PRIMELink.

END IF ARTICLE III

ARTICLE IV. SCOPE OF SERVICES

[SUBJECT TO REVISION AS APPLICABLE]

- IV.1 Consultant shall provide Engineering Services and include in its Scope of Services all associated services required for Consultant to provide such Services pursuant to this Agreement, along with all Services which normally would be required by law or common due diligent practice.
- IV.2 Consultant shall comply with the standards of City's Design Guidance Manual throughout the duration of the subject Project and this Agreement, unless specifically and explicitly excluded from doing so in the approved Scope of Services attached hereto, incorporated by reference herein and labeled as "EXHIBIT A" and as described in this ARTICLE IV.
- IV.3 Consultant shall adhere to the requirements of the design phases described in City's Design Guidance Manual, to include performing the tasks and submitting deliverables as described therein, unless specifically and explicitly excluded in the approved Scope of Service in "EXHIBIT A" hereto and as described in this ARTICLE IV.
- IV.4 Consultant acknowledges and accepts its responsibilities, as defined and described in City's General Conditions for City of San Antonio Construction Contracts, attached hereto, incorporated by reference herein and labeled as "EXHIBIT C".
- IV.5 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.
- IV.6 Consultant shall not commence service on any Task Order authorized under this Agreement until being thoroughly briefed on the scope of the project and being notified in writing to proceed. Should the scope subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.
- IV.7 Consultant, in consideration for the compensation herein described, shall render the professional services described in this ARTICLE IV necessary for the advancement of the Project through Substantial Completion to Final Completion.
- IV.8 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein and in accordance with the Compensation for Additional Professional Services, attached and incorporated herein and labeled as "EXHIBIT C". The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with and approval by City for each authorized service task and as provided in this Agreement.

- IV.9** Compensation for Additional Professional Services, which includes pre-priced tasks and/or hourly rates, is described in “**EXHIBIT A**” hereto. Consultant may submit a request for Partial Compensation prior to the completion of Additional Professional Services. A request for Partial Compensation must be accompanied by a progress report detailing the Additional Professional Services performed. Any partial payment made shall be in proportion to the Additional Professional Services performed, as reflected in the progress report and approved by the City.
- IV.10** For each design phase submittal, Consultant shall submit the required number and type of deliverables as defined in the Design Guidance Manual, addressed to the City’s Project Management Team, for use by City.
- IV.11** Prior to the actual printing of the final Construction Documents (the Project Plans and Specifications), one (1) advance copy shall be submitted to City. Upon review and approval of said Construction Documents (hereafter referred to as “CDs”), Consultant shall provide and submit same to City as follows:
- IV.11.1** Consultant shall submit the required number and type of Construction Documents as defined in the Design Guidance Manual and the General Conditions for City of San Antonio Construction Contracts, addressed to the City’s Project Management Team, for use by City. In addition, Consultant shall submit the required number and type of Construction Documents to the Contractor for use by the Contractor as defined in the General Conditions for City of San Antonio Construction Contracts.
- IV.11.2** Consultant further shall deliver digital and/or print copies of the final City-accepted CDs to plan rooms during the bidding process. A listing of plan rooms will be provided by the City.
- IV.11.3** Consultant accepts and agrees at Project closeout that Consultant is responsible for and shall post the Project’s As-Built final Plans and Specifications to City’s Internet-Based Project Management System.

END OF ARTICLE IV

ARTICLE V. TIME AND PERIOD OF SERVICE

- V.1** The term of this Agreement shall commence upon its approval by the San Antonio City Council and its execution by both Parties.
- V.2** Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the services under **ARTICLE IV** in a prompt and continuous manner, so as to not delay the development of services and so as to not delay the construction of the work for the Project, in accordance with the schedules approved by City. City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the Project.
- V.3** Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond Consultant's reasonable control. Within twenty one (21) calendar days from the occurrence of any event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement.
- V.IV** This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract and the completion of the Project, including any extra work and any required extensions thereto, unless terminated, as provided for elsewhere in this Agreement.

END OF ARTICLE V

ARTICLE VI. (RESERVED)

END OF ARTICLE VI

ARTICLE VII. COORDINATION WITH CITY

- VII.1** Consultant shall hold periodic conferences with City through the end of the Project. The Project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Consultant in this coordination, City shall make available, for Consultant's use in planning and designing the Project, all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to this particular Project, at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant to City upon termination or the completion of the Project or if instructed to do so by the Director.
- VII.2** The Director or his/her representative shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Consultant's services.
- VII.3** City promptly shall give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, or any development affecting the scope or timing of Consultant's services.
- VII.4** Unless otherwise required by City, City shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and other such approvals and consents from others, as may be necessary, for the completion of the Project. Consultant shall provide City reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Consultant pursuant to other provisions of the Agreement, but Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

END OF ARTICLE VII

ARTICLE VIII. REVISIONS TO DOCUMENTS

VIII.1 Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents, as may be required to meet the needs of City and which are within its Scope of Services. After the written approval by City of drawings, reports or other documents at the end of each phase of Services, any revisions, additions or other modifications made at City's request, which involve extra services and expenses to Consultant, shall require an Amendment to incorporate such services and associated compensation into this Agreement.

VIII.2 Any Amendments must be approved in writing by City prior to commencing work.

VIII.3 Revisions to the drawings, reports, or other documents, including additional submittals, that result from the Consultant not complying with the requirements of the Design Guidance Manual or not adhering to a level of quality consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances shall be made at no additional expense to the City.

END OF ARTICLE VIII

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- IX.1** All documents, including the original drawings, estimates, specifications and all other documents and data, previously owned by Consultant, shall remain the property of Consultant as instruments of service. However, it is to be understood City shall have free access to all such information and hold the right to make and retain copies of drawings, estimates, specifications and all other documents and data. Any reuse, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.
- IX.2** Consultant acknowledges and agrees, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City, upon request, termination or completion of this Agreement without restriction on future use.
- IX.3** Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by the Director.
- IX.4** Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that, in part or in whole, was produced from this Agreement is the property of City, including all equitable rights. No reports, maps, documents or other copyrightable works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of City (excluding any instrument of services, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same are based on any claim materials or work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.
- IX.5** Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by City, other Consultants and/or engineers and/or other persons, subsequent to the completion of the Project. City requires Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other Engineers or other persons, including electronic copies, subsequent to the Final Completion of the Project. Following Final Completion of the Project, if City requests Consultant perform

additional scope beyond that listed in “**EXHIBIT A**” hereto, City appropriately shall compensate Consultant for such additional scope work performed by Consultant.

- IX.6** Copies of documents, which may be relied upon by City, are limited to the printed copies (also known as hard copies) and PDF electronic versions sealed and signed by Consultant. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) furnished by Consultant to City or utility only are for convenience of City or utility. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk.
- IX.7** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Consultant, to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

END OF ARTICLE IX

ARTICLE X. TERMINATION AND/OR SUSPENSION OF SERVICES

X.1 RIGHT OF EITHER PARTY TO TERMINATE FOR DEFAULT

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

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

X.2 RIGHT OF CITY TO TERMINATE

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

X.3 RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF CONSULTANT TO TERMINATE

X.3.1 City reserves the right to suspend this Agreement at the end of any phase for the convenience of City by issuing a written and signed Notice of Suspension, citing this **ARTICLE X.3.1**, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall, in no way, guarantee what the total number of calendar days of suspension shall occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by the Consultant.

X.3.2 Consultant hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) calendar days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this **ARTICLE X.3.2**, to City after the expiration of one hundred twenty (120) calendar days from the effective date of the suspension. Termination, pursuant to this **ARTICLE X.3.2**, shall become effective immediately upon receipt of said written notice by City.

X.4 PROCEDURES CONSULTANT SHALL TO FOLLOW UPON RECEIPT OF NOTICE OF

TERMINATION

X.4.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set out hereinabove, Consultant immediately shall begin the phase-out and the discontinuance of all services, in connection with the performance of this Agreement, and shall proceed promptly to cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) calendar days after receipt of such Notice of Termination, unless Consultant successfully has cured a failure to perform, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant an extension to the time period for submittal of such statement.

X.4.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement, prior to the effective date of termination, shall be delivered to City, in the form requested by City, as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in **ARTICLE IX**.

X.4.3 Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of the fee.

X.4.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon City. Consultant further acknowledges the failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement by Consultant.

X.4.5 Failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to collect monies Consultant otherwise may be entitled to for services performed under this Agreement.

X.5 PROCEDURES CONSULTANT TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION

X.5.1 Upon receipt of written Notice of Suspension, which date also shall be the effective date of the suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and promptly shall proceed to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable

to this Agreement.

- X.5.2** Consultant shall prepare a statement showing, in detail, the services performed under this Agreement prior to the effective date of suspension.
- X.5.3** Copies of all completed or partially completed designs, plans and specifications, prepared under this Agreement prior to the effective date of suspension, shall be prepared for possible delivery to City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.
- X.5.4** In the event Consultant exercises the right to terminate one hundred twenty (120) calendar days after the effective suspension date, within thirty (30) calendar days after receipt by City of Consultant's Notice of Termination, Consultant promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing, in detail, the services performed under this Agreement prior to the effective date of suspension.
- X.5.5** Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.
- X.5.6** Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of the fee.
- X.5.7** City, as a public entity, has a duty to document the expenditure of public funds.
- X.5.8** Consultant acknowledges this duty imposed upon City. Consultant further acknowledges the failure of Consultant substantially to comply with the submittal of the statements and documents, as required herein, shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

END OF ARTICLE X

ARTICLE XI. CONSULTANT'S WARRANTY

Consultant warrants the services required under this Agreement shall be performed with the same degree of professional skill and care typically exercised by similar consulting professionals performing similar services in Bexar County, Texas. Consultant further warrants it has not employed or retained any company or person other than a bona fide employee, working solely for Consultant, to solicit or secure this Agreement, and it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of **ARTICLE X**.

END OF ARTICLE XI

ARTICLE XII. NON-DISCRIMINATION POLICY

XII.1 NON-DISCRIMINATION

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

XII.2 SUB-CONSULTANTS

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

END OF ARTICLE XII

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

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

END OF ARTICLE XIII

ARTICLE XIV. INSURANCE REQUIREMENTS

- XIV.1** Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "**S. GEVERS STREET DRAINAGE IMPROVEMENTS PROJECT**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by Consultant, attesting the furnished Certificate(s) represent Consultant's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and telephone number. The Certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Department – Contract Services Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- XIV.2** City reserves the right to review the insurance requirements of this **ARTICLE XIV** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance shall City allow modification whereby City may incur increased risk.
- XIV.3** Consultant's financial integrity is of interest to City; therefore, subject to Consultant's obligation to maintain reasonable deductibles in such amounts as are approved by Consultant's insurance companies, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects. If a project does not justify these standard limits of insurance coverages, Consultant may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

TABLE TO FOLLOW

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

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

XIV.4 Consultant agrees to require, by written contract, all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide to Consultant a Certificate of Insurance and endorsement naming Consultant and City as additional insureds. Policy limits of the coverages carried by Sub-Consultants and Subcontractors shall be determined as a business decision of Consultant. Consultant shall provide City with said Certificate(s) and endorsement prior to the commencement of any work by any Sub-Consultant and/or Subcontractor and through the period referenced in **ARTICLE XIV.3.5**. 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.

XIV.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive redacted copies of the policies, declaration page and all required endorsements. Consultant shall be required to comply with any such requests by City and shall submit all requested documents to City at the address provided below within ten (10) days. Consultant shall pay any costs incurred resulting from the provision of said documents to City.

XIV.6 Consultant shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Consultant's policy, City shall submit the received request, along with Consultant's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Consultant's policy information. Consultant and City agree City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City shall provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant's information.

XIV.7 Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:

XIV.7.1 Name City, 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;

XIV.7.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;

XIV.7.3 Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and

XIV.7.4 Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.

XIV.7.5 All correspondences sent by Consultant to City, with regard to Consultant's insurance coverages and requests shall be sent to:

**City of San Antonio
Attn: TCI Contract Services
P.O. Box 839966
San Antonio, Texas 78283-3966**

XIV.8 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.

XIV.9 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder until Consultant demonstrates compliance with the requirements hereof.

XIV.10 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its Sub-Consultants' and/or Subcontractors' performance of the work covered under this Agreement.

XIV.11 It is agreed Consultant's insurance shall be deemed primary and non-contributory, with respect to any insurance or self-insurance carried by the City of San Antonio, for liability arising out of operations under this Agreement.

XIV.12 It is understood and agreed the insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

XIV.13 Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XV. INDEMNIFICATION

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

XV.1 The provisions of this ARTICLE XV solely are for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

END OF ARTICLE XV

ARTICLE XVI. CLAIMS AND DISPUTES

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

XVI.2 TIME LIMIT ON CLAIMS

Claims by Consultant must be initiated in writing to City within twenty-one (21) calendar days after the occurrence of the event giving rise to such Claim.

XVI.3 CONTINUING CONTRACT PERFORMANCE

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

XVI.4 CLAIMS FOR ADDITIONAL TIME

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

XVI.5 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

XVI.5.1 No consequential damages shall be allowed; and

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

XVI.5.3 No profit shall be allowed on any damage claim.

XVI.6 NO WAIVER OF GOVERNMENTAL IMMUNITY

NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT

CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.

XVI.7 ALTERNATIVE DISPUTE RESOLUTION

XVI.7.1 CONTINUATION OF SERVICES PENDING DISPUTE RESOLUTION

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

XVI.7.2 REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS

Before invoking mediation or any other alternative dispute process set forth herein, the Parties agree they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days, after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

XVI.7.3 MEDIATION

- a. In the event City or Consultant shall contend the other has committed a material breach of this Agreement, the Party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
- b. Request for mediation shall be in writing, and shall request mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both Parties.
- c. In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **ARTICLE XVI** shall be deemed to have occurred.
- d. The Parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction

thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement shall be deemed consent to suit.

END OF ARTICLE XVI

ARTICLE XVII. SEVERABILITY

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

END OF ARTICLE XVII

ARTICLE XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

XVIII.1 No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to Sub-Contracts on City projects.

XVIII.2 Consultant acknowledges it is informed the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

XVIII.2.1 A City officer or employee;

XVIII.2.2 A City officer or employee's parent, child or spouse;

XVIII.2.3 A business entity in which City officer or employee, or the officer or employee's 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; or

XVIII.2.4 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.

XVIII.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, Consultant, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

END OF ARTICLE XVIII

ARTICLE XIX. TEXAS GOVERNMENT CODE §2270.002

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

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

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

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

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

END OF ARTICLE XIX

ARTICLE XX. CONFLICTS OF INTEREST DISCLOSURE

Consultant must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so shall constitute a violation of City's Ethics Code. To be "associated" in a business venture or business dealings includes: a) being in a partnership or joint venture with a City officer or employee; b) having a contract with a City officer or employee; c) being joint owners of a business with a City officer or employee; d) owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or e) having an established business relationship with a City Officer or employee as a client or customer.

END OF ARTICLE XX

ARTICLE XXI. STANDARD OF CARE/LICENSING

- XXI.1** Services provided by Consultant under this Agreement shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- XXI.2** Consultant shall be represented by personnel with appropriate licensure, registration and/or certification(s) at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings and preconstruction meetings.
- XXI.3** Consultant acknowledges the Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723 and/or the Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, (512) 305-9000 has licensing jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

END OF ARTICLE XXI

ARTICLE XXII. RIGHT OF REVIEW AND AUDIT

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

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

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

END OF ARTICLE XXII

ARTICLE XXIII. ENTIRE AGREEMENT

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

END OF ARTICLE XXIII

ARTICLE XXIV. VENUE

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

END OF ARTICLE XXIV

ARTICLE XXV. NOTICES

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

If intended for City, to:

City of San Antonio
TCI
Attention: Contract Services
114 West Commerce, 9th Floor
San Antonio, Texas 78205

If intended for Consultant, to:

HDR Engineering, Inc.
613 NW Loop 410
San Antonio TX 78216

END OF ARTICLE XXV

ARTICLE XXVI. INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between City and Consultant is Consultant is and shall remain an independent contractor. By the execution of this Agreement, Consultant and City do not change the independent contractor status of Consultant. Consultant shall exercise independent judgment in performing its duties and obligations under this Agreement and solely is responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of Consultant, in the performance of this Agreement, shall be construed as making Consultant the agent, servant or employee of City, or as making Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which City provides to or for its employees.

END OF ARTICLE XXVI

ARTICLE XXVII. CAPTIONS

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

END OF ARTICLE XXVII

ARTICLE XXVIII. ATTORNEY FEES

The Parties hereto expressly agree neither Party shall be responsible for payment of attorney's fees pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law or any other provision for payment of attorney's fees. Both Parties hereto expressly waive any claim to attorney's fees, should litigation result from any dispute in this Agreement.

END OF ARTICLE XXVIII

ARTICLE XXIX. CONFLICT RESOLUTION BETWEEN DOCUMENTS

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


IN WITNESS WHEREOF, the City of San Antonio lawfully has caused these present to execute this Agreement by the hand of City Manager, or his/her designee; Consultant, acting by the hand of **Carmen B. Abad-Fitts**, thereunto authorized **Vice President** does now sign, execute and deliver this document.

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

CITY OF SAN ANTONIO

HDR ENGINEERING, INC.

RODERICK SANCHEZ
ASSISTANT CITY MANAGER



CARMEN B. ABAD-FITTS
VICE PRESIDENT

APPROVED AS TO FORM:

CITY ATTORNEY

END OF ARTICLE XXIX

**EXHIBIT A SCOPE OF SERVICES/SCHEDULE OF PROJECT SERVICES/FEE
SUMMARY**

**(TO INCLUDE REIMBURSEABLES, IF ANY)
AND TIMELINE FOR DESIGN PHASE SERVICES**

(Shall include the role and responsibilities of Consultant, as detailed in City's General Conditions attached hereto)

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

**EXHIBIT B SUBCONSULTANT/SUPPLIER UTILIZATION PLAN, CHANGE OF
UTILIZATION AND SBEDA ORDINANCE COMPLIANCE AND PROVISIONS**

Exhibit B

A. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

ESBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (b), this contract is being awarded pursuant to the ESBE Prime Contract Program, and as such, CONSULTANT affirms that if it is presently certified as an ESBE (see *Emerging Small Business Enterprise* definition), CONSULTANT responding as the prime and proposing at least 51% ESBE participation (Prime and/or Sub-Consultant) will receive two (2) evaluation criteria points AND agrees not to sub-consult more than 49% of the contract value to a non-ESBE firm, and

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONSULTANT affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), CONSULTANT responding as the prime and proposing at least 51% SBE participation (Prime and/or Sub-Consultant) will receive five (5) evaluation criteria points AND agrees not to sub-consult more than 49% of the contract value to a non-SBE firm, and

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 4. (b), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONSULTANT affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONSULTANT responding as the prime and proposing at least 51% M/WBE participation (Prime and/or Sub-Consultant) will receive five (5) evaluation criteria points AND agrees not to sub-consult more than 49% of the contract value to a non-M/WBE firm, and

Aspirational Subcontracting Goals. In accordance with the SBEDA Ordinance, Section III. E. 3, this contract is being awarded pursuant to the Aspirational SBE, M/WBE, and AABE Subcontracting Goals, that are non-mandatory percentage goal(s) for overall S/M/WBE subcontractor participation on selected contracts. The goals are set by the GSC based upon the S/M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative S/M/WBE availability data to be collected by the City through its CVR system, and the utilization of S/M/WBEs. These Aspirational SBE, M/WBE, and AABE Subcontracting Goals are not mandatory but the City encourages all CONSULTANTS to meet the goals to achieve higher scores on the solicitation.

- a. **Thirty percent (30%) SBE Subcontracting Aspirational Goal.** In accordance with SBEDA Ordinance this contract is being awarded pursuant to the SBE Subcontracting Program. CONSULTANT agrees to subcontract or self-perform at least **30%** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).
- b. **Twenty percent (20%) M/WBE Subcontracting Aspirational Goal.** In accordance with SBEDA Ordinance this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONSULTANT agrees to subcontract or self-perform at least **20%** of its prime contract value to certified M/WBE firms headquartered or having a

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Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). This twenty percent (20%) subcontracting goal will also count toward the aforementioned thirty percent (30%) SBE subcontracting goal.

- c. **Three percent (3%) AABE Subcontracting Aspirational Goal.** In accordance with SBEDA Ordinance, this contract is being awarded pursuant to Segmented M/WBE Goal(s). CONSULTANT agrees to subcontract at least **3%** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This three percent (3%) subcontracting goal will also count toward the aforementioned twenty percent (20%) M/WBE subcontracting goal and the thirty percent (30%) SBE subcontracting goal.

Self-Performance. If the Prime CONSULTANT is a certified SBE, M/WBE and AABE firm, then the CONSULTANT is allowed to self-perform up to the entire SBE and/or M/WBE and/or AABE subcontracting goal(s) amount with its own forces. To the extent that the certified SBE, M/WBE and AABE Prime CONSULTANT does not self-perform a portion of the SBE and/or M/WBE and/or AABE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

Mentor Protégé Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (e), this contract is being awarded pursuant to the Mentor-Protégé Program, and as such, if a prime CONSULTANT is awarded any of the contracts listed below, they will be required to serve in the City's Mentor Protégé Program. If the prime CONSULTANT is already registered in the City's Mentor Protégé Program, then CONSULTANT will be required to continue their service in the Program for a two year period per the date of contract award. Please refer to the website at <https://besanantonio.com/> or contact Janice Wehrman, Program Administrator at (210) 486-5904 for the City's Mentor Protégé Program to learn more about the application process and Program requirements if awarded one or more of the contracts requiring mentorship participation.

Contracts that require the prime CONSULTANT to serve in the City's Mentor Protégé Program:

- **Civil Engineering**
 - **Bulverde Rd Phase 1 (Butterleigh to North of Quiet Meadows)**
 - **Seeling Channel Phase 3 Drainage**
- **Architecture:**
 - **District 9 Senior Center**
- **Landscape Architecture:**
 - **Brackenridge Park**

The Subcontractor/Supplier Utilization Plan which CONSULTANT submitted to City with its response for this contract, and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by CONSULTANT on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and AABE 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.

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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 SBE, M/WBE and AABE subcontracting goal of 30%, 20% and 3% respectively, 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 May 2017, African-American owned firms represent approximately 1.97% of available subcontractors, Hispanic-American firms represent approximately 11.41%, Asian-American firms represent approximately 1.69%, Native American firms represent approximately 0.42%, and Women-owned firms represent approximately 7.32% of available architecture and engineering subcontractors.

B. SBEDA Program Compliance – General Provisions

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

1. CONSULTANT shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONSULTANT's utilization and payment of Sub-Consultants, 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 Sub-Consultants with this term;
2. CONSULTANT shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONSULTANT or its Sub-Consultants or suppliers;
3. CONSULTANT shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview

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Sub-Consultants and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONSULTANT shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONSULTANT's Sub-Consultant / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONSULTANT to replace the Sub-Consultant / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONSULTANT of work previously designated for performance by Sub-Consultant or supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants, or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONSULTANT shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONSULTANT shall retain all records of its Sub-Consultant payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONSULTANT's Sub-Consultant / Supplier Utilization Plan, the CONSULTANT shall not be given credit for the participation of its S/M/WBE or HUBZone Sub-Consultant(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONSULTANT and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONSULTANT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONSULTANT for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONSULTANT has represented to CITY which primary commodity codes each Sub-Consultant will be performing under for this contract. CITY recommends all Sub-Consultants to be registered in the CVR.

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C. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONSULTANT represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONSULTANT shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, 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 Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONSULTANT shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into pursuant to CITY contracts.

D. Prompt Payment

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

E. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or

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document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

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

I. 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 this Ordinance). 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.

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 Sub-Consultant 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

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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 Sub-Consultants 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.

Certification Application – this form shall be completed by vendors when applying for Certification and/or re-Certification status for participation in the City of San Antonio's S/M/WBE Program. This form shall be submitted, to the City's certifying agency, every two years by each certified vendor by the anniversary date of its original Certification.

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

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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

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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 Sub-Consultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and Consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Sub-Consultants.)

Graduation – an SBE or M/WBE firm permanently graduates from the City of San Antonio S/M/WBE program when it meets the criteria for graduation set forth in Section III.E.7 of this Ordinance. A firm's graduation or temporary suspension from the S/M/WBE program does not necessarily affect its eligibility to be recertified and to participate in the City's S/M/WBE Program as an SBE or M/WBE. Graduated SBE or M/WBE firms shall be eligible to apply for SBE or M/WBE re-Certification following the expiration of the two-year period immediately following graduation. Such application for SBE or M/WBE re-Certification shall only be granted on condition that the graduated SBE or M/WBE firm presents documentation as required by the SBO that establishes that the SBE or M/WBE firm's annual revenues and number of employees have fallen below the SBA's small business size standards for the Relevant Industry for two consecutive years of the post-graduation period. However, a graduated SBE or M/WBE firm may continue to participate in and benefit from other Race-Neutral non-industry-specific remedies of the S/M/WBE Program as described in Section III.C of this Ordinance.

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."

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,

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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 Evaluation Preference – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Architectural & Engineering and Professional Services 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 this Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

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

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

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

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

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

Payment – dollars actually paid to Prime Contractors and/or Sub-Consultants 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

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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 this Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

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

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

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

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.

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Small Business Advocacy Committee (SBAC) – an eleven-member citizens committee made up of trade groups and members of the general business community, and appointed by the City Council as an advisory group to: (a) assist the Director of Economic Development Department (EDD) or designee, the City Manager or designee, and City Council in reviewing the continuing programs for contractors and Prime Contractors and Sub-Consultants that promote S/M/WBE participation; (b) coordinate activities and actions with the City Council Economic and Human Development Committee (EHDC) or corresponding committee designated by the Mayor and/or City Council; and (c) make recommendations to the Director of EDD or designee, the City Manager or designee, and City Council concerning modifications of such programs and procedures established pursuant to this Ordinance. Committee members may participate as advisory non-voting members of Goal Setting Committees.

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.

Sub-Consultant – 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 Sub-Consultant 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.

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Utilization Documentation – a binding part of the contract which includes the name of all Sub-Consultants to be utilized in the contract, specifying the S/M/WBE Certification category for each, as approved by the EDD Director or designee. Additions, deletions or modifications of the utilization amounts or substitutions or deletions of S/M/WBE Sub-Consultants requires an amendment 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 this 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.

EXHIBIT C GENERAL CONDITIONS FOR CITY OF SAN ANTONIO