

ORDINANCE 2019-06-13-0525

**AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH  
ASTELLE, LLC (DBA) WORKSHOP FOR CONSULTING SERVICES  
RELATE TO THE DEVELOPMENT OF THE BANDERA ROAD CORRIDOR  
PLAN, IN THE AMOUNT NOT TO EXCEED \$400,000.00.**

\* \* \* \* \*

**WHEREAS**, the City Council adopted the SA Tomorrow Comprehensive Plan on August 11, 2016 to provide a functional framework to guide in the development and implementation of policies to promote the future Vision for the City; and

**WHEREAS**, the SA Tomorrow Comprehensive Plan recommends the development of a series of sub-area plans (Regional Centers, Community Areas, and Corridors) to provide a more coordinated, efficient and effective structure for neighborhood planning; and

**WHEREAS**, the City Council has determined that it would be in the best interest of the City to hire an independent firm to provide consulting services for developing corridor plans; **NOW THEREFORE**

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

**SECTION 1.** The City Manager or designee is hereby authorized to execute an agreement with Astelle, LLC (dba) WorkShop, for consulting services related to the Bandera Road Corridor Plan, to further implement the goals and objectives of the SA Tomorrow Comprehensive Plan, in an amount not to exceed \$400,000.00, with substantially the same terms and conditions as those set out in the draft agreement attached hereto as **Attachment "I"**.

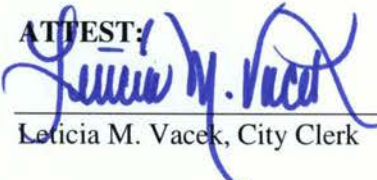
**SECTION 2.** If a contract can be finally executed, within sixty (60) days, in substantial compliance with the terms of **Attachment "I"**, the City Manager or designee is authorized to execute such a contract without further City Council action. Should a contract be finally negotiated which varies from the standard terms, the contract must be considered through a subsequent ordinance.

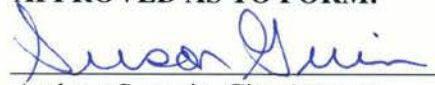
**SECTION 3.** Payment is authorized to be encumbered and made payable to Astelle, LLC (dba WorkShop) for consultant services related to the development of the Bandera Road Corridor Plan, in the amount not to exceed \$400,000.00 in Fund 40099000, WBS Element 23-01825-01-02-01, and GL 5201040.

**SECTION 4.** This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED this 13<sup>th</sup> 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  
1 For

<b>Agenda Item:</b>	<b>49 ( 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 )</b>
<b>Date:</b>	06/13/2019
<b>Time:</b>	10:10:52 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	Ordinance approving a professional services agreement with Astelle, LLC (dba Work5hop) for consultant services related to the development of the Bandera Road Corridor Plan, in the amount not to exceed \$400,000 as included in the FY 2019 - FY 2024 Capital Improvement Program. [Lori Houston, Assistant City Manager; Bridgett White, Director, Planning]
<b>Result:</b>	Passed

<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor	x					
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				
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				



**PROFESSIONAL SERVICES AGREEMENT  
FOR  
BANDERA ROAD CORRIDOR PLAN CONSULTING SERVICES**

STATE OF TEXAS                   §  
   §  
COUNTY OF BEXAR           §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and Astelle, LLC dba Work5hop by and through its Partner, Jay Louden ("Consultant"), both of which may be referred to herein collectively as the "Parties".

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

**I.       DEFINITIONS**

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

- 1.1     "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2     "Consultant" is defined in the preamble of this Agreement and includes its successors.
- 1.3     "Director" shall mean the director of City's Planning Department.

**II.     TERM**

- 2.1     Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_. The City Manager or designee is authorized to amend the Agreement by extending the term for a period of up to one year in accordance with Article XVI. Amendments.
- 2.2     If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

**III.  SCOPE OF SERVICES**

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

3.2 The scope of work shall include the following phases: Discovery, Exploration, and Synthesis. Each phase will include components related to three specific disciplines: Public Involvement, Transportation Analysis, and Market Analysis; as well as general planning work needed to accomplish the overall intent of the plan. This scope delineates the work by the three phases defined above, describes the general planning scope necessary to accomplish each phase of work, and then further defines the scope in each specific discipline.

3.3 As used in Article III. Scope of Services, the following terms shall have meanings as set out below:

3.3.1 Consultant Team - Contracted consultant team led by Astelle, LLC dba WorkShop ("Prime Consultant")

3.3.2 Planning Team - Group of stakeholders, including residents, property owners, business owners, community and neighborhood groups, and representatives from local institutions and professional groups, as identified by City staff.

3.3.3 Technical Working Group - Technical group assembled by the City of San Antonio and the Texas Department of Transportation (TxDOT) that includes regional governmental agency stakeholders, such as VIA Metropolitan Transit, the Alamo Area Metropolitan Planning (AAMPO), and others identified by City staff.

3.3.4 Task Force - Group formed to advise the project leads of planning process and includes officials from the City of San Antonio, City of Leon Valley, and other offices of area policymakers

3.3.5 Stakeholder - Agency, entity, or group with an interest in the plan, generally including the City of Leon Valley, VIA Metropolitan Transit, Texas Department of Transportation (TxDOT), neighborhood groups within the study area, and others as designated by City

3.3.6 Plan Area - The approximately 6.5 linear mile stretch of Bandera Road between Loop 410 and Loop 1604, together with a ¼-mile area buffer along each side of the roadway

3.4 Phase 1: Discovery

The Discovery Phase will focus on developing a comprehensive understanding of existing conditions, gathering and reviewing data including data developed by others, as well as establishing the foundation for planning and design principles that will inform the next phase. In addition to the meetings specifically identified below, Consultant Team will attend up to eight in-person meetings with City and Stakeholders as identified by City and participate in telephone and/or online meetings as needed (no limitation). Consultant Team will produce meeting notes from each in-person meeting as well as produce monthly updates documenting project progress and online or telephone meetings. At least one representative from Consultant Team will attend, and where determined appropriate by City will facilitate Planning Team, Technical Working Group, and Task Force meetings during the duration of the contract period.

3.4.1 Kickoff Meeting



A one-day Existing Conditions Site Visit, coordinated by Consultant Team with input from City, will be conducted as the first part of the project kickoff. Members of the Prime Consultant and each of the subconsultants will visit portions of the project corridor with City and Stakeholders, as identified by City. Audit will cover Bandera Road between I-410 and Loop 1604, with a focus on identifying key issues along the corridor. Participants will observe conditions and discuss likely areas of concern to users. The project team will conduct an on-site conditions assessment while considering the following general issues: connectivity, continuity, and clarity of transportation modes, crossing conditions, safety, accessibility, aesthetics and landscaping, and environment. Following the Existing Conditions Site Visit, the project kickoff will conclude with a debriefing with the Consultant Team and City. During this meeting, observations from the site visit will be discussed and internal team assignments and schedules will be conveyed.

### 3.4.2 Existing Conditions Analysis

#### 3.4.2.A Information Needs

City will provide GIS data for the Plan Area (in shapefile, vector, and raster formats) from existing City databases, additional existing conditions data developed by other planning teams and provided to the city, and data provided to the city by other third-party sources. While not exhaustive, anticipated data needs and sources are summarized in the table below. Consultant Team is responsible for obtaining data from other sources listed in the table below as Consultant Team deems necessary to complete the Work. City is not responsible for providing any data not currently in its possession.

Data Category	Example Indicators	Anticipated Source
<i>Demographics</i>	Population, age, family size, income, employment by industry, wages by industry	ESRI Business Analyst, US Census, OnTheMap
<i>Real Estate</i>	Rent, occupancy, absorption, existing and proposed building square feet, appraised values	CoStar, existing City data, local brokers & developers
<i>Recent Downtown Projects &amp; Transactions</i>	Size, typology, status, price	CoStar, conversations with local brokers & developers
<i>Travel Data</i>	Information previously produced by separate consultants	TxDOT

For data noted to be provided by the City, Consultant Team will submit a data request. Data must be provided by City in GIS, CAD, or Excel format. In addition to the data noted above, City will provide any planning studies, neighborhood

plans, transportation studies, land use data, demographic information, economic information, and related information for the Plan Area in electronic format.

#### 3.4.2.B Transportation Analysis

A series of technical evaluations will be conducted in close coordination with TxDOT to determine existing conditions and future conditions if no other changes are made (also called “no-build” conditions), for traffic, transit, and active transportation modes. The gap analysis will consider both local and regional contexts. Traffic evaluation will be conducted in close coordination with TxDOT to minimize duplication of efforts and ensure alignment of assumptions and results.

The Consultant Team will also coordinate closely with VIA to determine existing transit system service, ridership, and gaps in the supporting transportation network (i.e. lack of sidewalks, unsafe street crossings) to identify key challenges and opportunities for existing and future transit service along the corridor. Consultant Team will summarize transit operations information for the Bandera Corridor, with a focus on direct corridor service and connections to key routes and destinations as identified by City during the project kickoff meeting.

Based on the outcome of the data review and compilation, Consultant Team will coordinate data collection at key locations, with a focus on addressing existing conditions questions and informing subsequent quantitative analysis.

#### 3.4.2.C Market Analysis

Consultant Team will conduct initial high-level research on current market conditions and recent trends with respect to population and demographics, as well as socioeconomic indicators. Such indicators will include measures of economic distress (poverty, wages and incomes, inequality); measures of human capital (educational attainment levels, labor force participation, occupation); and transportation indicators (travel times to work, means of transportation to work). Consultant Team will review current, projected, and existing development projects to build a better understanding of local and regional development trends and how those will impact the corridor and the City.

#### 3.4.2.D Land Use Analysis

Consultant Team will review previously-adopted land use plans (including Regional Center, neighborhood, community, perimeter, corridor, and sector plans) to create an existing land use map and a previously-proposed land use map, noting conflicts between maps where they occur. Consultant Team will create a map of areas which are currently underutilized, improperly utilized, or which otherwise present an apparent opportunity to be explored in the plan.



#### 3.4.2.E Existing Conditions Analysis Report and Presentation

- i. Graphics: Report/presentation graphics will include base maps, analysis graphics and text, charts, graphics, and other graphics-intensive elements. Graphics will be limited to the Plan Area only. Graphics noted as “plan graphics” may be either traditional site plan format (orthogonal to land surface) or three-dimensional graphics, at the option of Consultant Team, in order to most clearly convey information. Specific graphics include, but are not limited to:
  - 3D modeling of existing buildings
  - Plan graphic of land ownership, broken into 3-5 categories
  - Plan graphic of land value
  - Plan graphic of land use, broken into 8-10 categories
  - Plan graphic of roadway network
  - Plan graphic of sidewalk network
  - Plan graphic of bicycle lane network, separated according to lane type
  - Chart and/or graph showing roadway usage at various times of day and days of week
  - Plan graphic of current transit routes
  - Plan graphic of proposed transit routes, pending available information
  - Plan graphic of existing parks, natural areas, and environmental resources
  - Plan graphic of land use opportunities and limitations
  - Plan graphic depicting usage density, using qualitative information if quantitative information is not available
- ii. Drone Videography: Consultant Team will complete drone videography for the length of the corridor, including video taken from a single route above the Bandera Road right-of-way and video of three (3) feature areas defined by the Planning Team.
- iii. Format: Existing Conditions Analysis Material will be compiled into a presentation with speaker’s notes, as well as formatted into a report. Both presentation and report will be graphically consistent with the format of the SA Tomorrow Comprehensive Plan. Consultant Team will revise presentation and report one time following feedback from City.

#### 3.4.3 Public Involvement

3.4.3.A Review: Consultant Team will review public involvement information developed to date by the City and TxDOT.

#### 3.4.3.B Visioning and Goal Setting

- i. Vision Statement: Consultant Team will evaluate inputs from City, Stakeholders, and Public and propose a vision statement consistent with those inputs. The Vision Statement will be aligned with the overall vision articulated in the SA Tomorrow Comprehensive Plan, as well as any visions defined in sub-plans covering any portion of Project Area developed to date by City.
- ii. Goals: Consultant Team will propose a series of up to six (6) goals consistent with the Vision Statement. Goals will target specific components of the future plan, including transportation, quality of life, land use, public amenities, and other plan components.

3.4.3.C Public Input Meeting #1: Location, timing, and meeting format (which may include various formats such as a charrette, voting/scoring systems, and public comment in addition to a presentation) to be determined through in-person or telephone discussions between Consultant Team and City. City will be responsible for booking venue, providing refreshments (if needed), and providing audiovisual equipment as needed to present a PowerPoint show, including audio amplification and video recording. Consultant Team will be responsible for format and content of presentation, in coordination with City through a conference call or meeting. Presentation will include:

- Communication of roles and responsibilities of Consultant Team, City, and Stakeholders (as applicable)
- Communication of project schedule and scope of work, in general format
- Presentation of Vision Statement and Goals
- Presentation of Existing Conditions Analysis Presentation
- Solicitation of public feedback

#### 3.4.4 Best Practices Technical Memoranda

Consultant Team will develop Best Practices Technical Memoranda addressing the following issues. Each technical memorandum will be a two- to four-page technical report developed in InDesign format, with graphic elements as deemed appropriate by Consultant Team, addressing a specific facet of planning and current best practices related to that facet.

3.4.4.A Technology: How current and future technology will affect patterns of use on the corridor, transportation modes, and land use. Memorandum will also address the relationship between corridor planning and quality of life issues.

3.4.4.B Sustainability: Best practices for sustainability in relation to transportation planning, including air quality considerations, built environment best practices, and practical recommendations for implementation.



### 3.5 Phase 2: Exploration

The Exploration Phase is a process of developing alternatives, using the base of information from the analyses performed in the Discovery Phase as well as feedback received from Public and Stakeholders. Consultant Team will generate alternatives for transportation and traffic improvement, streetscape design and improvements, and desired land uses. In addition to the meetings specifically identified below, Consultant Team will attend up to three in-person meetings with City and participate in telephone and/or online meetings as needed (no limitation). Consultant Team will produce meeting notes from each in-person meeting as well as produce monthly updates documenting project progress and online or telephone meetings. Consultant Team will attend, and where determined appropriate by City, facilitate, up to three Planning Team, Technical Working Group, and Task Force meetings.

#### 3.5.1 Alternative Generation

##### 3.5.1.A Future Land Use

Consultant Team will develop a realistic, yet aspirational, outcome for land use in the Plan Area consistent with Vision Statement, Goals, Existing Conditions Analysis, and Consultant Team's understanding of what is market-supportable. Consultant Team will compare the current corridor study area market economics for a desired land use to the market economics for that land use along successful peer corridors.

##### 3.5.1.B Transportation and Traffic Improvement Plan

Consultant Team will develop two design concepts for transportation infrastructure improvements. These alternatives will be based on analysis developed to date and input from City, Public, and Stakeholders. The design concepts will draw from a toolbox of safety counter-measures and other Complete Streets design treatments.

##### 3.5.1.C Streetscape and Amenities Plan

Parallel and coordinated with development of the Transportation and Traffic Improvement Plan alternatives, Consultant Team will develop two alternatives for streetscape and amenities.

##### 3.5.1.D Evaluation Metric Development

Consultant Team will develop design criteria to encourage a consistent approach to designing and evaluating each element of the right-of-way. These criteria will include both qualitative and quantitative metrics to objectively measure not just the technical merits of each option, but also the level of community support and feasibility of implementation. Metrics will be designed for easy comprehensibility and for use with the Public. Consultant Team will develop and apply metrics for quality of life, transportation success,

sustainability, safety, implementation feasibility, economic impact, and implementation of multimodal transportation to all options developed.

#### 3.5.1.E Presentation Development

Consultant Team will develop an Alternatives Presentation in PowerPoint format, with speaker's notes, showing the options developed for Future Land Use, Transportation and Traffic Improvement Plan, and Streetscape and Amenities Plan, along with evaluation metrics scoring. Presentation will be graphically consistent with the format of the SA Tomorrow Comprehensive Plan.

### 3.5.2 Public Involvement

#### 3.5.2.A Planning Team Evaluation

Consultant Team will meet with City and TxDOT to present Alternatives Presentation and discuss its content and implications. Consultant Team will revise presentation one time following feedback from City.

3.5.2.B Public Input Meeting #2: Location, timing, and meeting format (which may include various formats such as a charrette, voting/scoring systems, and public comment in addition to a presentation) to be determined through in-person or telephone discussions between Consultant Team and City. City will be responsible for booking venue, providing refreshments (if needed), and providing audiovisual equipment as needed to present a PowerPoint show, including audio amplification and video recording. Consultant Team will be responsible for format and content of presentation, in coordination with City. Presentation will include:

- Update to previously-presented project schedule
- Presentation of Vision Statement and Goals
- Presentation of Alternatives Presentation
- Solicitation of public feedback

#### 3.5.3 Selection of Preferred Plan

Following Public Meeting #2, the Consultant Team will meet with City to select a Preferred Plan. The Preferred Plan may consist of complete options as developed, or it may consist of selected components of complete options combined to create a new plan.

### 3.6 Phase 3: Synthesis

With a preferred option in place, development of final information can be done. In addition to the meetings specifically identified below, Consultant Team will attend up to two in-person meetings with City and participate in telephone and/or online meetings as needed (no limitation). Consultant Team will produce meeting notes from each in-person meeting as well as



produce monthly updates documenting project progress and online or telephone meetings. Consultant Team will attend, and where determined appropriate by City, facilitate, up to three Planning Team, Technical Working Group, and Task Force meetings.

#### 3.6.1 Refinement of Preferred Plan

After the Preferred Plan is selected at the end of the Synthesis phase, Consultant Team will produce a Refined Plan. Refined Plan will be a series of graphic exhibits depicting the following elements in the Plan Area:

- Bandera Road traffic lanes and traffic control devices
- Sidewalks and bicycle lanes along Bandera Road
- Connections to parks, natural areas, and greenways within the Plan Area
- Conceptual arrangements for pedestrian amenities

When the Refined Plan is complete, Consultant Team will meet with City to present Refined Plan and receive feedback. If necessary, Consultant Team will produce one revision to Refined Plan. Requested revisions will only be iterative in nature and will not revisit conclusions reached in Phase 2, #3.

#### 3.6.2 Preliminary Fiscal Impact Analysis

Using City-provided property tax assessment data for current properties in the corridor, together with projected future land use trends, conceptual incremental tax revenue projections will be created by the Consultant Team. Projections will be aggregated by land use type.

#### 3.6.3 Conceptual Cost Estimates

The Consultant Team will develop estimates of cost for work depicted in the Refined Plan. Estimates will be in a per-project format, and small projects may be grouped into larger portions of work. Estimates will address work on City-funded projects only. Projects projected to be done by private developers or other entities, including Stakeholders, are not included. Consultant Team will integrate cost estimate information provided by others into an overall cost summary.

#### 3.6.4 Final Report Preparation

After the completion of all above scope, the Final Report will be prepared. Final Report will be a graphics-intensive document, stylistically coordinated with the SA Tomorrow Comprehensive Plan, and will include the following information (to be refined in collaboration with City):

- Executive Summary
- Summary of public involvement process
- Documentation of public input and associated plan refinement
- Existing conditions analysis summaries

- Refined conceptual designs of preferred alternative in cross section and key plan views
- Corridor land use and transportation plan
- Best Practices Innovation technical memorandum
- Sustainability Assessment memorandum
- Conceptual cost estimates

A draft version of the report will be completed and submitted to the City and oversight committees for review in PDF format. Following review, a final version of the report will be completed and submitted to City.

### 3.6.5 Final Presentation Preparation and Meetings/Presentations

Using the graphics and text developed for the Final Report, a Final Presentation with speaker's notes will be developed for use by City. Final Presentation will be 10-20 slides long, stylistically coordinated with the SA Tomorrow Comprehensive Plan, and will include summaries of information from the Final Report as determined by City. Consultant Team will prepare Final Presentation and submit to City for review and will prepare up to two revisions of Final Presentation according to comments from City. Consultant Team will participate in up to five meetings and/or presentations to application City boards, commissions, and committees, including the City Council.

### 3.6.6 Public Involvement

Public Input Meeting #3: Location, timing, and meeting format to be determined through in-person or telephone discussions between Consultant Team and City. City will be responsible for booking venue, providing refreshments (if needed), and providing audiovisual equipment as needed to present a PowerPoint show, including audio amplification and video recording. Consultant Team will be responsible for format and content of presentation, in coordination with City. Presentation will include:

- Presentation of Final Presentation
- Solicitation of public feedback
- Discussion of next steps

## 3.7 Qualifications and Exclusions

### 3.7.1 Qualifications

3.7.1.A Forward-looking work, including projections of traffic, pedestrian, transit, and bicycle volumes; projections of future construction cost; projections of future tax assessment data; and similar are necessarily conceptual and subject to forces outside the control of the Consultant Team. They are provided as professional opinions only and should not be relied upon exclusively for budgeting or other determinative uses.



- 3.7.1.B All meetings denoted in the project scope to include Consultant Team will be attended in person by Astelle LLC dba Work5hop. Attendees may include other members of the Consultant Team in person or via telephone, depending on the subject matter being discussed, but no guarantee of in-person attendance by a particular subconsultant is made except where noted.
- 3.7.1.C Work will proceed in sequential fashion as laid out in this scope and decisions will be documented by Consultant Team in meeting notes, and communicated to City for comment, within five days of each decision. Major changes to decisions made which require revisiting completed work may require additional fee.
- 3.7.1.D Work will be done to a reasonable standard of care, defined as ordinary skill, care, and judgement.
- 3.7.1.E Graphics will be prepared in Illustrator, TIF, PSD, SketchUp, and CAD formats, determined by Consultant Team as appropriate for information being depicted.
- 3.7.1.F Charts and graphics will be developed using Excel as a base, then visually modified using Illustrator.
- 3.7.1.G Presentations will be developed in PowerPoint and delivered in PDF and PowerPoint formats.
- 3.7.1.H Reports will be developed in InDesign and delivered in PDF and InDesign formats, with all images embedded or otherwise packaged.
- 3.7.1.I All interim reports and presentations will be delivered electronically only, in PDF and MS-Word format.
- 3.7.1.J Videography will be delivered in AVI or MPEG4 format.
- 3.7.1.K Photography will be delivered in JPEG format.
- 3.7.1.L Drone videography is dependent on receiving necessary clearances from public agencies and public and private landowners to perform drone overflights.

### 3.7.2 Exclusions

Work is conceptual in nature only. No schematic design, design development, or construction documents are included in this scope.

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

- 3.8.1 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding, and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by

Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. City shall notify Consultant in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in subsection 7.4 this Agreement.

- 3.8.2 Consultant shall have a reasonable right to rely upon the accuracy and completeness of information provided by the City.
- 3.8.3 Consultant shall not be responsible for delays in meeting deliverable deadlines that may result due to causes beyond Consultants reasonable control, provided Consultant notifies City in writing at least 15 days prior to any such deadline. The City may authorize additional calendar days or make adjustments to the Task schedule and related deliverables, within the existing scope of this Agreement, upon mutual agreement in writing between the Director and Consultant, as to the reasonableness of said additional time or adjustment.

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

- 4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \$400,000.00 as total compensation, to be paid to Consultant as follows:
- 4.2 Invoices shall be submitted monthly for work performed. Invoice shall be accompanied by progress report of accomplishments and work products within the period. If progress is satisfactory within each period, according to the Work Plan and Compensation Schedule attached as "Exhibit I," payment will be issued.
- 4.3 Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Planning Department, Attention: Rudy Niño, P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing in accordance with Article XVI. Amendments.
- 4.5 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Consultant following written approval of the



final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

- 5.1 Any and all writings, documents, or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document, or information shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.
- 5.3 City shall own all right, title and interest in all intellectual property delivered by the Consultant under this Agreement, including, without limitation, all text, drawings, graphs, tables, photographs, illustrations and other content in fulfillment of this Agreement and related documentation developed by the Consultant for the City (collectively, "Work Product"). All such Work Product shall be considered "Works Made for Hire" (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of City. Consultant hereby assigns to City for no additional consideration, all worldwide right, title, and interest that it may possess in such Work Product including, but not limited to, all intellectual property rights thereto and Consultant shall execute such further assurances evidencing such assignment as City may require from time to time. Upon request, Consultant will take such steps as are reasonably necessary to enable City, at City's cost and expense, to carry out the intent of the above assignment and to record such assignment.

## **VI. RECORDS RETENTION**

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any

and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.

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

## **VII. TERMINATION**

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
- 7.4.2 Bankruptcy or selling substantially all of company's assets;
- 7.4.3 Failing to perform or failing to comply with any covenant herein required; or



7.4.4 Performing unsatisfactorily.

- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested by City.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

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

If intended for City, to:

Rudy Niño  
City of San Antonio  
Planning Department  
PO Box 839966  
San Antonio, Texas 78233

If intended for Consultant, to:

Jay Loudon  
Work5hop  
618 East Locust Street  
San Antonio, Texas 78212

## **IX. NON-DISCRIMINATION**

Non-Discrimination. As a party to this contract, 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.

## **X. INSURANCE**

- 10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Planning Department, which shall be clearly labeled "Bandera Road Corridor Plan Consulting Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Planning Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:



<u>INSURANCE TYPE</u>	<u>LIMITS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.  Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.

- 10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Consultant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

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

- 10.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation, employers' liability, general liability, and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - Provide advance written notice directly to City of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.



## XI. INDEMNIFICATION

- 11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.
- 11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.



## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees, or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding and this Agreement is made in reliance thereon that Consultant intends to use the following subcontractors in the performance of this Agreement: Ximenes & Associates, Inc., Page Southerland Page, Inc., HR&A Advisors, Inc., and Nelson/Nygaard. Any deviation from this subcontractor list, whether in the form of deletions, additions, or substitutions shall require written approval by the Director in accordance with Article XVI. Amendments, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director.
- 12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the written consent of the Director. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee, or subcontractor.
- 12.5 Any attempt to transfer, pledge, or otherwise assign this Agreement without said written approval, shall be void ab initio, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

## **XIII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and



consultants; that the doctrine of “respondeat superior” shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

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

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

#### **14.2 Definitions.**

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

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



effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

- 14.2.3 **Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 14.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.
- 14.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective respondents and subcontractors that are ready, willing, and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.
- 14.2.6 **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.
- 14.2.7 **City** – refers to the City of San Antonio, TX.
- 14.2.8 **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.

- 14.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.
- 14.2.10 **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.
- 14.2.11 **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.
- 14.2.12 **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.
- 14.2.13 **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.



- 14.2.14 **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.
- 14.2.15 **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.
- 14.2.16 **Good Faith Efforts** – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)
- 14.2.17 **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).]

- 14.2.18 **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.
- 14.2.19 **Individual** – an adult person that is of legal majority age.
- 14.2.20 **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.”
- 14.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.
- 14.2.22 **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.
- 14.2.23 **M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.
- 14.2.24 **M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of



contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

(1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or

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

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

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

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

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

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

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



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

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

- 14.2.28 **Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.
- 14.2.29 **Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.
- 14.2.30 **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).
- 14.2.31 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.
- 14.2.32 **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.
- 14.2.33 **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”).
- 14.2.34 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSAs), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 14.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

- 14.2.36 **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.
- 14.2.37 **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.
- 14.2.38 **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).
- 14.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- 14.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.
- 14.2.41 **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.
- 14.2.42 **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.



- 14.2.43 **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.
- 14.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.
- 14.2.45 **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.
- 14.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.
- 14.2.47 **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.
- 14.2.48 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Consultant's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.
- 14.2.49 **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able



to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

#### 14.3 SBEDA Program Compliance – General Provisions

As 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:

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



previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

- 14.3.5 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.
- 14.3.6 Consultant shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- 14.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Consultant's Subcontractor / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- 14.3.8 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 has 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 Subcontractor will be performing under for this contract. City recommends all Subcontractors to be registered in the CVR.
- 14.4 SBEDA Program Compliance – Affirmative Procurement Initiatives. The City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. 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:
  - 14.4.1 SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (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 agrees not to subcontract more than 49% of the contract value to a non-SBE firm, and
  - 14.4.2 M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONSULTANT affirms that if it is presently certified as an M/WBE (see Minority/Women Business Enterprise definition), CONSULTANT agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm, and



- 14.4.3 M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONSULTANT agrees to subcontract or self-perform at least **ten percent (10%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). If the Prime CONSULTANT is a certified M/WBE firm, then the CONSULTANT is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime CONSULTANT does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

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

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

- 14.4.4 Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal(s) of 10% 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 Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of January 2019, African-American owned firms represent approximately 2.91% of available subcontractors, Hispanic-American firms represent approximately 7.14%, Asian-American firms represent approximately 0.69%, Native American firms represent approximately 0.14%, and Women-owned firms represent approximately 3.88% of available Professional Services subcontractors.



- 14.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.
- 14.6 Prompt Payment. Upon execution of this contract by Consultant, Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Consultant's reported subcontract participation is accurate. Consultant shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new City contracts shall be issued to the Consultant until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.
- 14.7 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:
- 14.7.1 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;
- 14.7.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;



- 14.7.3 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;
- 14.7.4 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
- 14.7.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

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

## **XV. CONFLICT OF INTEREST**

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies, or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
  - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
  - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.



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

#### **XVI. AMENDMENTS**

- 16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.
- 16.2 Notwithstanding the subsection above, the City Manager or designee may authorize the following amendments, in writing and executed by both the City and Consultant, without further action by the City Council:
- 16.2.1 An extension of the term of this Agreement for a period of up to 1 year, in accordance with Article II. Term; and/or,
- 16.2.2 An amendment or extension that will cause the amendment expenditure to be no more than \$50,000. Any such amendment shall be subject to and contingent upon appropriation of funds for any increase in expenditures by the City.
- 16.3 Notwithstanding the subsections above, the Director may authorize an addition, deletion, or substitution of a subconsultant, in accordance with Article XII. Assignment and Subcontracting, in writing and executed by both the City and Consultant, without further action by the City Council.

#### **XVII. SEVERABILITY**

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

#### **XVIII. LICENSES/CERTIFICATIONS**

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all

competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

#### **XIX. COMPLIANCE**

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

#### **XX. NONWAIVER OF PERFORMANCE**

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

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

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

#### **XXII. LEGAL AUTHORITY**

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

#### **XXIII. PARTIES BOUND**



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

#### **XXIV. CAPTIONS**

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

#### **XXV. INCORPORATION OF EXHIBITS**

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

#### **XXVI. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

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

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

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

**XXVIII. [Reserved]**

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

**CITY OF SAN ANTONIO**

**CONSULTANT**

Astelle, LLC dba Work5hop

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

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

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

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