PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL PROFESSIONAL ENGINEERING SERVICES FOR TRAFFIC ENGINEERING

STATE OF TEXAS }

COUNTY OF BEXAR }

CITY OF SAN ANTONIO }

This Professional Services Agreement for **On-Call Professional Engineering Services for Traffic Engineering** (hereafter referred to as "this Agreement" or "the Agreement") is made and entered into in San Antonio, Bexar County, Texas, between City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

_____Name of Firm_____

_____Address_____

_____City, State & Zip Code_____

(hereafter referred to as "Consultant"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for **On-Call Professional Engineering Services for Traffic Engineering** as set forth herein in connection with the above designated solicitation for City.

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ARTICLE I. DEFINITIONS

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

I.1 **"APPLICATION FOR COMPENSATION"** means written form for a request from Consultant, to be paid for completed Work.

I.2 **"CCMS"** means City's Contract Management System, whereby payments made by Consultants to Sub-Consultants, said payments confirmed by Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.

I.3 **"CITY"** means The City of San Antonio, Texas and its authorized representatives.

I.4 "**CITY DESIGNATED REPRESENTATIVE (ODR)"** means person designated by City to act for City.

I.4 **"COMPENSATION"** means amounts paid for services under this Agreement.

I.5 **"CONSULTANT"** means _____ Name of firm_____ and its officers, partners, employees, agents and representatives, as well as all Sub-Consultants, if any, and all other persons or entities for which Consultant legally is responsible.

I.6 **"DIRECTOR"** means the Director of City's Transportation and Capital Improvements or his/her designee.

I.7 **"FINALIZED TASK ORDER"** means a written agreement, authorized by both parties in the City's Portal system and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Project as further defined herein.

I.8 **"ON-CALL CONTRACT"** means a contract used by the City, through which a task order, on an as-needed basis, shall be issued for work or services, as determined by City.

I.9 **"PLANS AND SPECIFICATIONS"** means the construction documents.

I.10 **"PRIME*LINK*"** means City's internet-based project management software for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Consultant.

I.11 **"PROJECT"** means the capital improvement/construction development undertaking of City.

I.12 **"PROPOSAL"** means Consultant's Proposal to provide services for a project.

I.13 **"PROPOSED SERVICE PLAN"** means a detailed plan outlining how and when the City-requested Work or SERVICES shall be provided by the Consultant/Contractor.

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I.14 **"PROPOSED TASK ORDER REQUEST"** means a request to Consultant to submit a Proposal for a specific Project, as further defined herein.

I.15 **"SAMSA"** means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.

I.16 **"SAWS"** means the San Antonio Water System, Inc.

I.17 **"SCHEDULE OF VALUES"** means the values allocated to materials and various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as City may require.

I.18 **"SCOPE OF SERVICES"** means the services described in Article IV Scope of Services herein.

I.19 **"SERVICES"** means those services described in the Scope of Services, as set out in an issued Task Order.

I.20 **"TASK ORDER"** means a work order issued to Consultant/Contractor setting forth the agreed to Scope of Services/Work, pricing and associated terms for an individual Project.

I.21 **"TOTAL COMPENSATION"** means the not-to-exceed amount of this Agreement.

I.22 **"WORK"** means the services required by the issued Task Order, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Consultant or any Sub-Consultant, material suppliers or any other entities for which Consultant is responsible to fulfill Consultant's Task Order obligations.

END OF ARTICLE I

(Remainder of this Page 4 intentionally left blank)

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ARTICLE II. COMPENSATION

II.1 The Compensation for all services included in this Agreement **SHALL NOT EXCEED FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00)**. Any extension of this Agreement, up to two (2) additional one-year "Extension Period," may increase the total amount of this Agreement to an amount not to exceed **ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($1,500,000.00)**.

II.2 Consultant shall submit a Proposed Service Plan for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposed Service Plan. The City's approval shall be evidenced by a finalized Task Order executed by both parties in PRIME*Link*. Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into PRIME*Link*. Each finalized Task Order, as entered into PRIME*Link*, shall become a part of this Agreement.

II.2.1 Consultant understands and agrees that City may have entered into multiple professional services agreements with other Consultants and City has the authority to assign Work/Task Orders at its sole discretion.

II.2.2 Consultant understands and agrees that City makes no minimum guarantees, with regard to the amount of services, if any, Consultant may be extended under this Agreement.

II.3 Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the not to exceed pre-priced tasks and or hourly rates included in **Exhibit 1** hereto.

II.4 **REIMBURSABLE EXPENSES.** City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses not agreed upon and accepted in writing by City prior to the execution of this agreement. If Consultant, Sub-Consultant or vendor of Consultant should make an expenditure which, prior to its occurrence, had not been approved in writing by City, either prior to or after the execution of this agreement, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

II.4.1 Travel outside SAMSA only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of service under this Agreement. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all the reimbursable charges. Travel expenses shall not exceed the amount noted in Exhibit a Scope/Budget/Reimbursables without further approval of City. City shall not pay for Consultant's travel within SAMSA.

II.4.2 Mailing, courier services and copies of documents requested in writing by City in excess of the copies which are to be provided under this Agreement. These costs

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shall not exceed the amount noted in attached Scope/Budget without further approval of City.

II.4.3 Graphics, physical models and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope/Budget without further approval of City.

II.4.4 City shall not allow a markup on any of the above reimbursable items and only shall reimburse actual costs incurred with City's written approval.

END OF ARTICLE II

ARTICLE III. METHOD OF PAYMENT

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

III.1.1 Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Consultant's proposal/fee schedule (as shown in Exhibit 1 hereto) and the approved Task Order.

III.1.2 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, with required back-up and reference to the individual Task Order, in PRIME*Link*. Entered invoices shall indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.

III.2 Consultant shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others, in connection with a Project and the performance of the Work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such ten-day period shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City a bona fide dispute associated with an unpaid Sub-Consultant and its provided service. Consultant shall include a provision in each of its Sub-Consultant agreements imposing the same payment obligations on Sub-Consultants as are applicable to Consultant hereunder and, if City so requests, shall provide copies of such payments by Sub-Consultants to City. If Consultant fails to make payment promptly to a Sub-

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Consultant for Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.

III.3 Consultant warrants that title to all Services covered by an Application for Payment shall pass to City no later than the time of payment by City. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have previously been issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of any and all liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided Work relating to this Agreement. Consultant shall indemnify and hold City harmless from any liens, claims, security interests or encumbrances filed by anyone claiming by, through or under the items covered by payments made by City to Consultant.

III.4 Consultant may submit a request for Partial Compensation, prior to a Task Order's completion. A request for Partial Compensation shall be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report, and approved by the Director and at City's sole discretion. Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each service/Project, as may be described in fee schedule and/or hourly rates included in Exhibit 1 hereto.

III.5 Project Close Out and Final Payment:

III.5.1 Consultant's final billing shall indicate on its face: "Final Bill - No Additional Compensation is Due to Consultant".

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

III.5.2.1 delays in the performance of Consultant's Work;

III.5.2.2 third-party claims filed or reasonable evidence received indicating a probable filing of such claims, unless security acceptable to City is provided by Consultant;

III.5.2.3 failure of Consultant to make payments properly to Sub-Consultants, suppliers and/or vendors for supplied services, labor, materials or equipment;

III.5.2.4 reasonable evidence that Consultant's Work cannot be completed for the unpaid balance amount under an assigned Task Order and this Agreement;

III.5.2.5 damage to City; or

III.5.2.6 persistent failure by Consultant to carry out the performance of its

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services in accordance with this Agreement.

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

III.5.3.1 In the event of any dispute(s) between the parties, regarding the amount properly compensable for any Phase, as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such claim. In the event Consultant does not initiate and follow the claim procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Consultant.

III.5.3.2 City shall make final compensation of all sums due Consultant not later than thirty (30) days after Consultant's execution and delivery of a mathematically correct and accepted final Pay Application.

III.5.3.3 Acceptance of final compensation by Consultant shall constitute a waiver of all claims except those previously made in writing and identified by Consultant as unsettled at the time of Consultant's submittal of its final application for compensation.

III.5.3.4 Consultant agrees to maintain adequate books, payrolls and records in forms deemed satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services, unless a dispute regarding the Project or Consultant's Work is ongoing. If any dispute exists, upon notice from City, Consultant shall retain its books, payrolls and records for more than four (4) years after completion of all Services performed herein and for as long after four (4) years as City may request. At all reasonable times, Consultant shall provide access to City and City's duly authorized representatives to all personnel of Consultant, all books, payrolls and records of Consultant and City shall have the right to audit same.

III.6 Internet-based Project Management Systems. City shall administer its services through an Internet-Based Management System (hereafter referred to as "PRIME*Link*"). Consultant shall conduct its communication with City through PRIME*Link* and Consultant shall perform all project-related functions utilizing PRIME*Link*. Communications shall includes correspondences, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and any other administrative activities. City shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all necessary Project

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Team Members. All of Consultant's invoices shall be submitted through PRIME*Link*.

END OF ARTICLE III

ARTICLE IV. SCOPE OF SERVICES
[SUBJECT TO REVISION, AS APPLICABLE]

IV.1 Consultant understands and agrees that City has entered into multiple **On-Call Professional Engineering Services for Traffic Engineering** agreements with other Consultants and has the authority to assign services at City's discretion. As stated in Article II.2.2 herein, Consultant understands and agrees that City makes no minimum guarantees with regard to the amount of Work, if any, which Consultant may be extended under this Agreement.

IV.2 This Agreement is an on-call, Task Order or indefinite delivery agreement for **On-Call Professional Engineering Services for Traffic Engineering** and such other services that are required for Consultant to provide or are associated with **On-Call Professional Engineering Services for Traffic Engineering**. Specific requirements as to location, conditions, procedures and associated services pertaining to a Project shall be negotiated and set out in individual Task Orders for each request. Assigned and accepted Task Orders to Consultant shall be incorporated into and become a part of this Agreement.

IV.3 Consultant shall provide **On-Call Professional Engineering Services for Traffic Engineering** and all associated services required for Consultant to provide such Services, pursuant to this Agreement, as further defined in individual Task Orders. Services may include, but are not limited to, the following:

IV.3.1 In general the following tasks shall be included in the scope of the work:

Transportation Systems Planning
1.1.1 Policy Planning
1.2.1 Systems Planning
1.3.1 Subarea/Corridor Planning
1.4.1 Land Planning/Engineering
1.5.1 Feasibility Studies

Schematic Development
3.1.1 Route Studies and Schematic Design (Minor Roadways)
3.2.1 Route Studies and Schematic Design (Major Roadways)

Roadway Design
4.1.1 Minor Roadway Design
4.1.2 Major Roadway Design

Traffic Engineering Studies
7.1.1 Traffic Engineering Studies
7.2.1 Highway-Rail Grade Crossing Studies

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7.3.1 Traffic Signal Timing
7.4.1 Traffic Control Systems Analysis, Design and Implementation
7.5.1 Intelligent Transportation System

Traffic Operations Design
8.1.1 Signing, Pavement Marking and Channelization
8.2.1 Illumination
8.3.1 Signalization
8.4.1 ITS Control Systems Analysis, Design and Implementation
8.6.1 Rail-Highway Design

Bicycle and Pedestrian Facilities
9.1.1 Bicycle and Pedestrian Facility Development

Material Inspection and Testing
12.1.3 Materials Engineering
12.1.5 Portland Cement Concrete Placement

Geotechnical Services
14.1.1 Soil Exploration
14.2.1 Geotechnical Testing
14.3.1 Transportation Foundation Studies

Surveying and Mapping
15.1.1 Right of Way Surveys
15.2.1 Design Survey
15.2.2 Construction Survey

Utility Engineering
18.2.1 Subsurface Utility Engineering

The selected consultant(s) also shall:

- Be available to commence services, as described herein, immediately as needs arise.
- Be able to complete the project within the specified time.
- Be able immediately to assign qualified personnel necessary to perform and complete the traffic engineering assignment. Traffic engineering services provided by the chosen firm/team will include, but not be limited to, field investigation and measurement, traffic data collections, existing and ultimate condition evaluation, calculations, development of alternatives, design, Level of Service (LOS) analysis, proposed improvement evaluation and recommendations, cost estimating, etc. necessary to complete the assignment. Periodic updates, documenting field observations and service status, also must be provided. The consultant(s) will serve as the liaison between the City of San Antonio, stakeholders and other interested parties, as needed. As part of these professional services, it will be necessary for the consultant to document all activities and contacts, as well as to prepare the following documents:
- Preliminary documents, plans and/or reports, as directed, which discuss findings and recommendations
- Final documents, plans and/or reports, per City requirements

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- Handouts and graphical displays for use at public meetings
- Synchro or VISSIM files
- CAD Files (Microstation or Auto CAD)
- Cost estimate calculations

IV.4 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday services, as requested by City. Persons retained by Consultant to perform Work pursuant to this Agreement shall be employees or Sub-Consultants of Consultant.

IV.5 Consultant shall not commence Work on any authorized and issued Task Order, pursuant to this Agreement, until thoroughly being briefed on the scope of a project and being notified by City in writing to proceed. Should the scope of Work of an issued Task Order subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.

IV.6 Consultant, in consideration for the compensation herein provided, shall render the professional services described in this **ARTICLE IV SCOPE OF SERVICES** that are necessary for the advancement of a project to substantial completion.

IV.7 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined in each City-authorized Task Order and in accordance with the Consultant's Fee Schedule, attached hereto and incorporated herein and labeled as Exhibit 1. The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with City and with the approval of the Director for each authorized Task Order and as provided in this Agreement.

IV.8 Consultant's Fee Schedule, which includes pre-priced tasks and/or hourly rates, is incorporated by reference herein and attached hereto and labeled as Exhibit 1.

END OF ARTICLE IV

ARTICLE V. TIME AND PERIOD OF SERVICE

V.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and upon the execution by both parties and shall remain in force for the period of one (1) year, herein referred to as the "Initial Term".

V.2 As the enabling Ordinance provides, City shall retain an option to extend this Agreement for two (2) additional one-year periods, hereafter referred to as the "Extension Period(s)". The Director shall have the authority to exercise such options at his/her discretion.

V.3 Time is of the essence of this Agreement. Consultant shall perform and complete its obligations for the various Tasks of services under Article IV Scope of Services herein in a prompt and continuous manner so as to not delay the construction of the work for a

SAMPLE

Project in accordance with the schedules approved by City and Construction Contractor. If, upon review of a Task Order, corrections, modifications, alterations and/or additions are required of Consultant for providing its services, those items shall be completed by Consultant before that Task Order is approved.

V.4 Consultant shall not proceed with the next appropriate Task Order without a written authorization from City. City may elect to discontinue Consultant's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City retains the right to make adjustments to the scope of Consultant's Task Order obligations at any time to achieve the required services.

V.5 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's reasonable control. Within twenty one (21) days from the occurrence of any such event, for which time for performance by Consultant shall significantly be extended under this **Article V.5**, Consultant shall give written notice thereof to City stating the reason for such time extension and the actual or estimated time for completion thereof. If City determines that Consultant is responsible for Consultant's need for an extension of time, City shall have the right to make a Claim as provided in this Agreement.

V.6 This Agreement with Consultant shall remain in force for a period of time City determines reasonably may be required for the design, award of the contract and the completion of a Project, including any extra work and any required extensions thereto, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

END OF ARTICLE V

ARTICLE VI. PROJECT INSPECTION SERVICES REQUEST PROCESS

VI.1 Inspection requirements shall be established with each project-specific issued Task Order.

VI.2 When City has a Project for which it desires to procure **On-Call Professional Engineering Services for Traffic Engineering**, City shall notify Consultant by issuing a proposed Task Order Request through PRIME*Link*. Each proposed Task Order Request shall include, at a minimum: the name of the project; the location of the project; copies of or access to project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposal; a project schedule, to include any specific deadlines for performance of **On-Call Professional Engineering Services for Traffic Engineering**; any project-specific insurance requirements necessitated by the Work, which may require additional types of coverages or higher levels of coverage for Consultant than are required by the Agreement; and a deadline for providing City with a Proposal based on the above supplied information.

VI.3 Consultant shall prepare and submit to City, within the deadline stated in a proposed Task Order Request, a Proposal for the desired services which shall include, at a minimum: Scope of Services; specific staffing; and an estimate of Task Order cost to City, based on

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the rates and fees agreed upon in **Exhibit 1** hereto and Consultant's approved Fee Schedule. Consultant shall submit the Proposal in editable electronic format to the City through PRIME*Link*. By submitting a Proposal, Consultant thereby agrees to perform the requested service(s) within the time stated in the proposed Task Order Request.

VI.4 Consultant and City shall negotiate the Proposal. Once Consultant and City reach mutual agreement as to scope, necessary staffing, scheduling and total cost, City shall issue a finalized Task Order through PRIME*Link*, to be accepted by both parties evidencing the agreed to scope and costs.

VI.5 The Director has the authority to execute a Task Order in PRIME*Link* on behalf of City, so long as such finalized Task Order does not exceed the total contract value and funds are provided for in the project budget, as allocated by the San Antonio City Council.

VI.6 Consultant shall not proceed with services until a finalized Task Order has been negotiated and accepted by both Consultant and City, Consultant receives a written Notice to Proceed from City and all documents required by City in advance of commencement of Work (to include Consultant's proof of insurance) have been provided to City. Any services provided or expenses incurred by Consultant, prior to receiving a written Notice to Proceed or after the expiration of either this Agreement or a finalized Task Order, shall be at Consultant's sole risk and expense and may not be reimbursable by City.

VI.7 Actual amounts billed shall not exceed the total amount as set in a finalized Task Order.

VI.8 City shall not pay and Consultant shall not invoice for any time or expense associated with a project proposed Task Order Request process, including development of Proposal and the associated Task Order negotiation.

END OF ARTICLE VI

ARTICLE VII. COORDINATION WITH THE CITY

VII.1 Consultant shall hold periodic conferences with City representative(s) through the end of a project. A project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Consultant in this project coordination, City shall make available for Consultant's use in planning for a project all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to a particular project, at no cost to Consultant. However, any and all such information shall remain the property of City and immediately shall be returned by Consultant upon termination or the completion of a project or if so instructed by City.

VII.2 The Director shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Consultant's

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services.

VII.3 City promptly shall give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, in the work of a Contractor or any development that affects the scope or timing of Consultant's services.

VII.4 Unless otherwise required by City, City shall furnish approvals and permits from all governmental authorities having jurisdiction over a project and other such approvals and consents from others, as may be necessary, for the completion of a project. Consultant shall provide City reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Consultant pursuant to other provisions of the Agreement, but Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

END OF ARTICLE VII

ARTICLE VIII. REVISIONS TO DOCUMENTS

Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents as may be required to meet the needs of City and which are within the Consultant's Scope of Services. After the approval of reports or other documents by City, any revisions, additions or other modifications made at City's request, which involve extra services and expenses to Consultant, only shall be requested through an additional Task Order for services.

END OF ARTICLE VIII

ARTICLE IX. OWNERSHIP OF DOCUMENTS

IX.1 All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by Consultant shall remain the property of Consultant as instruments of service. However, it is understood that City shall have free access to all such Consultant information and City is granted the right to make and retain copies of Consultant's drawings, estimates, specifications and all other documents and data. Any reuse of Consultant's information without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant.

IX.2 Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, immediately shall be delivered to City at no additional cost to City, upon request or termination or completion of this Agreement without restriction on its future use.

IX.3 Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant

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shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City.

IX.4 Consultant hereby assigns all statutory and common law copyrights to City of any copyrightable Work product that in part or in whole was produced from this Agreement, including all equitable rights. No reports, maps, documents or other copyrightable Works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, drawings or other copyrightable Work produced under this Agreement shall become the property of City (excluding any instrument of services, as defined in **Article IX.1** herein, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction, against City, insofar as the same are based on any claim that materials or Work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

IX.5 Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers or other persons, subsequent to the completion of a project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, to include electronic copies, subsequent to the completion of a project.

IX.6 Copies of documents, which may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) that are furnished by Consultant to City only are for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

IX.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

END OF ARTICLE IX

ARTICLE X. TERMINATION AND/OR SUSPENSION OF SERVICES

X.1 RIGHT OF EITHER PARTY TO TERMINATE FOR DEFAULT.

SAMPLE

X.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform, through no fault of the terminating party, in accordance with the terms of this Agreement and a failure to cure said failure, as provided in this **Article X.1**.

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

X.2 RIGHT OF CITY TO TERMINATE.

X.2.1 City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a signed Notice of Termination (citing this **Article X.2.1**), which shall take effect on the twentieth (20th) day following receipt by Consultant of said Notice of Termination and/or upon the scheduled completion date of the performance phase of a project on which Consultant then currently is working, whichever effective termination date occurs first.

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

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

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

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

X.4.1 Upon receipt of a Notice of Termination from City and prior to the effective date of termination, unless the Notice otherwise directs or Consultant immediately

SAMPLE

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

X.4.2 Copies of all completed or partially completed documents and all reproductions of all completed or partially completed documents, prepared under a Task Order pursuant this Agreement prior to the effective date of termination, immediately shall be delivered to City in a form requested by City as a pre-condition to a final payment to Consultant. These documents shall be subject to the restrictions and conditions set forth in Article IX herein.

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

X.4.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that the failure of Consultant to comply with the submittal of the required statement(s) and document(s), as cited herein, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed by Consultant under this Agreement.

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

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

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

X.5.2 Consultant shall prepare a statement showing, in detail, the services performed under a Task Order and this Agreement, prior to the effective date of suspension.

SAMPLE

X.5.3 Copies of all completed or partially completed documents, prepared under a Task Order pursuant to this Agreement prior to the effective date of suspension, shall be prepared for possible delivery to City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

X.5.4 In the event Consultant exercises its right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt of City's Notice of Termination, Consultant promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing, in detail, the services performed under this Agreement prior to the effective date of suspension.

X.5.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.

X.5.6 Upon the above conditions being met, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of any fee.

X.5.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that failure of Consultant substantially to comply with the submittal of the required statement(s) and document(s), as outlined above, shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

END OF ARTICLE X

ARTICLE XI. CONSULTANT'S WARRANTY

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

END OF ARTICLE XI

ARTICLE XII. NON-DISCRIMINATION POLICY

SAMPLE

XII.1 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. Consultant represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges that it 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 Consultant from participating in City contracts, or other sanctions. This **Article XII.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

XII.2 SUB-CONSULTANTS. Upon execution of this Agreement by Consultant, Consultant shall provide City a detailed outreach and diversity plan for approval by City, including Consultant's list of Sub-Consultants, and shall require all of its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's web site. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any listed and approved Sub-Consultant from a project.

END OF ARTICLE XII

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

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

END OF ARTICLE XIII

ARTICLE XIV. INSURANCE REQUIREMENTS

XIV.1 Prior to the commencement of any Work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's

Transportation and Capital Improvements Department's (hereafter referred to as "TCI") Contract Services Division, which clearly shall be labeled **"On-Call Professional Engineering Services for Traffic Engineering"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by Consultant, attesting that the furnished Certificate(s) represent Consultant's current insurance coverages. City shall not accept a Memorandum of Insurance or Binder from Consultant as proof of insurance. The certificate(s) shall have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Contract Services Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

XIV.2 City reserves the right to review the insurance requirements of this **Article XIV** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance will City allow modification of insurance coverages whereby City may incur increased risk.

XIV.3 Consultant's financial integrity is of interest to City; therefore, subject to Consultant's obligation to maintain reasonable deductibles in such amounts as are approved by Consultant's insurance companies, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects/contracts. If a project/contract does not justify these standard limits of insurance coverages, Consultant may request a review and modification of the City's insurance requirements, to be considered on a project-by-project/contract-by-contract basis:

SAMPLE

(Remainder of this Page 20 intentionally left blank)

TYPE	AMOUNTS
XIV.3.1. Workers' Compensation **XIV.3.2.** Employers' Liability	***Statutory*** $1,000,000.00/$1,000,000.00/ $1,000,000.00
XIV.3.3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Explosion, Collapse, Underground e. Contractual Liability	For Bodily Injury and Property Damage of: **$1,000,000.00** per occurrence; **$2,000,000.00** General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage must include per project aggregate.
XIV.3.4. Business Automobile Liability: **a.** Owned/leased vehicles **b.** Non-owned vehicles **c.** Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of **$1,000,000.00** per occurrence
XIV.3.5. Umbrella or Excess Liability Coverage	**$5,000,000.00** per occurrence combined limit Bodily Injury (including death) and Property Damage.
XIV.3.6. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	**$1,000,000.00** per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

XIV.4 Consultant agrees to require, by written contract, that all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same insurance coverage required of Consultant herein and provide to Consultant a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall acquire said certificate and endorsement, prior to the commencement of any Work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Article XIV.3.5**. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

XIV.5 If City requests a copy/copies of an insurance policy, Consultant promptly shall comply

SAMPLE

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

XIV.6 Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

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

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and

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

XIV.7 Within ten (10) calendar days of receipt by Consultant of a notice of cancellation or the 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 under this Agreement, should there be a lapse in insurance coverages at any time. Failure of Consultant to both provide and maintain the required insurance coverages shall constitute a material breach of this Agreement.

XIV.8 In addition to any other remedies City may have, upon Consultant's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Consultant immediately to stop Work and Consultant immediately shall stop work until Consultant demonstrates compliance with the insurance requirements hereof.

XIV.9 Nothing herein contained shall be construed as limiting in any way the extent to which

SAMPLE

Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its Sub-Consultants' and/or Subcontractors' performance of the Work covered under this Agreement.

XIV.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.

XIV.11 It is understood and agreed that the insurance coverages required are in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided by Consultant.

XIV.12 Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

END OF ARTICLE XIV

ARTICLE XV. INDEMNIFICATION

XV.1 CONSULTANT FULLY WILL INDEMNIFY and HOLD HARMLESS CITY and its officials, officers, agents, employees, volunteers, directors and representatives (hereafter referred to as "indemnitee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and defense costs, made upon indemnitee caused by or resulting from any act of negligence, intentional tort, intellectual property infringement or failure to pay a Sub-Consultant, Subcontractor or Supplier committed by Consultant or its Agent, Consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this Agreement. This Indemnification shall not apply to any liability resulting from Indemnitee's negligence or willful misconduct in instances where the negligence or willful misconduct causes personal injury, bodily injury, death or property damage. If a court of competent jurisdiction finds Consultant and City jointly liable, liability shall be apportioned comparatively in accordance with the laws of the State without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under State law.

XV.2 The provisions of this **Article XV** solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

END OF ARTICLE XV

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ARTICLE XVI. CLAIMS AND DISPUTES

XVI.1 As used herein, a Claim is a demand or assertion by one of the parties to this Agreement seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief, with respect to the terms of the Agreement. The term "Claim" also may include other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims shall be initiated by notice to the other party electronically through PRIME*Link*. A Claim of Consultant, whether for additional compensation, additional time or other relief, shall be sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

XVI.2 A Claim by either Consultant or City shall be initiated electronically through PRIME*Link* and sent to the other party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.

XVI.3 Pending final resolution of a Claim, except as otherwise agreed upon in writing, Consultant shall proceed diligently with performance of a Task Order and this Agreement and City shall continue to make payments to Consultant in accordance with this Agreement.

XVI.4 If Consultant wishes to make a Claim for an increase in the time for performance, notice to City through PRIME*Link*, as stated in this **Article XVI** herein, shall be given. Consultant's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

XVI.5 Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply to claims by both Consultant and City:

XVI.5.1 No consequential damages shall be allowed.

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

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

XVI.6 Nothing in this **Article XVI** shall be construed to waive City's Governmental Immunity from a lawsuit, which Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.

XVI.7 ALTERNATIVE DISPUTE RESOLUTION.

XVI.7.1 Each party to this Agreement is required to continue to perform its

SAMPLE

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

XVI.7.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Agreement agree they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this **Article XVI.7.2** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

XVI.7.3 MEDIATION.

XVI.7.3.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

XVI.7.3.2 Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon the written agreement of both parties.

XVI.7.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this **Article XVI** shall be deemed to have occurred.

XVI.7.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in San Antonio, Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

XVI.7.4 Consultant and City expressly agree that, in the event of litigation, both parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment

SAMPLE

Act, common law or any other provision for payment of Attorneys' fees.

END OF ARTICLE XVI

ARTICLE XVII. SEVERABILITY

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

END OF ARTICLE XVII

ARTICLE XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

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

XVIII.2 Consultant acknowledges that it is informed that the Charter of City and its Ethics Code prohibits a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; a City officer or employee's parent, child or spouse; a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10)%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a Sub-Consultant or Subcontractor on a City contract; and/or a partner or a parent of a subsidiary business entity.

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

END OF ARTICLE XVIII

ARTICLE XIX. TEXAS GOVERNMENT CODE §2270.002

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Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
(1) does not boycott Israel; and
(2) will not boycott Israel during the term of the contract.

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

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

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

END OF ARTICLE XIX.

ARTICLE XX. CONFLICTS OF INTEREST DISCLOSURE

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

END OF ARTICLE XX

ARTICLE XXI. STANDARD OF CARE/LICENSING

XX.1 Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

XX.2 Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning a project including, but not limited to, scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

END OF ARTICLE XXI

ARTICLE XXII. RIGHT OF REVIEW AND AUDIT OF CONSULTANT'S RECORDS

XXI.1 Consultant grants City and its designees the right to audit, examine or inspect, at City's election, all of Consultant's Records relating to the performance of Work under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Consultant's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain Consultant's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute.

XXI.2 "Consultant's Records" shall include any and all information, materials and data of every kind and character generated as a result of the Work under any Task Order and this Agreement. Example of Consultant Records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

XXI.3 City agrees that it will exercise its right to audit, examine or inspect Consultant's Records only during regular business hours. Consultant agrees to allow City and City's designee access to all of Consultant's Records, Consultant's facilities and the current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

XXI.4 Consultant shall include this audit clause in any Sub-Consultant and Subcontractor, Supplier or vendor contract.

END OF ARTICLE XXII

ARTICLE XXIII. ENTIRE AGREEMENT

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

END OF ARTICLE XXIII

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ARTICLE XXIV. VENUE

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

END OF ARTICLE XXIV

ARTICLE XXV. NOTICES

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

If intended for City, to:
Transportation and Capital Improvements
Attention: Contract Services
114 West Commerce, 9th Floor
San Antonio, Texas 78205

If intended for Consultant, to:
_____Name of Firm_____
_____Address _____
___City, State & Zip Code____

END OF ARTICLE XXV

ARTICLE XXVI. INDEPENDENT CONTRACTOR

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

END OF ARTICLE XXVI

ARTICLE XXVII CAPTIONS

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

SAMPLE

IN WITNESS WHEREOF, the City of San Antonio lawfully caused these present to execute this Agreement by the hand of City Manager, or his/her designee; Consultant, acting by the hand of _____, thereunto authorized _____ does now sign, execute and deliver this document.

Executed on this _____ day of _____, 20_____. .

CITY OF SAN ANTONIO _____(FIRM)

By: _____ By: _____
RODERICK J. SANCHEZ, AICP,CBO
ASSISTANT CITY MANAGER

_____
Title

APPROVED:

_____
CITY ATTORNEY

END OF ARTICLE XXVII

SAMPLE

EXHIBIT I

CONSULTANT'S FEE SCHEDULE

(TO INCLUDE REIMBURSEABLES, IF ANY)

SAMPLE

END OF EXHIBIT I

EXHIBIT II

DBE PROGRAM PROVISIONS

SAMPLE

END OF EXHIBIT II

EXHIBIT III

GENERAL CONDITIONS FOR CITY OF SAN ANTONIO

SAMPLE

END OF EXHIBIT III