

ORDINANCE

2021-05-20-0363

**APPROVING FUNDING IN AN AMOUNT NOT TO EXCEED \$25,000.00
FROM THE MIDTOWN TIRZ AND AUTHORIZING A PROFESSIONAL
SERVICES AGREEMENT FOR AN IMPACT STUDY FOR
UNDERGROUND CONVERSION OF OVERHEAD UTILITIES ON THE
BROADWAY STREET CORRIDOR IN SAN ANTONIO, TEXAS, IN
COUNCIL DISTRICTS 1 AND 2, WITHIN THE MIDTOWN TIRZ.**

* * * * *

WHEREAS, the City of San Antonio (“City”) and the Midtown TIRZ Board of Directors (“Board”) support programs which allow for economic development within its boundaries; and

WHEREAS, the City is currently working on The Broadway Street Corridor which seeks to reconstruct approximately 3.1 miles of the corridor (from Houston Street to Hildebrand Avenue) into a complete street that is pedestrian, bicycle, and transit-friendly. Improvements to the corridor include new sidewalks, driveway approaches, bicycle amenities, lighting, streetscape and landscape amenities, drainage, and traffic enhancements; and

WHEREAS, the Broadway Street Corridor project currently has \$82 million in funding from various sources and includes funding for relocating the utilities for the lower segment of the corridor, from Houston Street to IH-35, however, utility conversion was not budgeted for the Upper Segment Phase I (IH-35 to Mulberry Avenue) or Upper Segment Phase II (Mulberry Avenue to Hildebrand Avenue); and

WHEREAS, on May 11, 2021, the Midtown TIRZ through Resolution T31 2021-05-11-02R approved to funding in an amount not to exceed \$25,000 authorized the execution of the Professional Services Agreement with TXP, Inc to conduct a study to analyze the fiscal impact of converting utilities from overhead to underground for Upper Segment Phases I and II also known as the Impact Study for Underground Conversion of Overhead Utilities on the Broadway Street Corridor (“Impact Study”); and

WHEREAS, in accordance with Section 311.010 (b) of the Act, the Board is authorized to enter into agreements to dedicate revenue from the tax increment fund to pay for eligible project costs related to the construction of public infrastructure and eligible project costs that benefit the TIRZ; and

WHEREAS, it is now necessary for the City Council to approve funding from the Midtown TIRZ for the Impact Study in an amount not to exceed \$25,000 and to authorize the Professional Services Agreement; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Professional Services Agreement with TXP, Inc is hereby approved. A copy of the Professional Services Agreement, in substantially final form, is attached to this Ordinance as **Exhibit A**.

SECTION 2. The City Manager or his designee is hereby authorized to execute the Professional Services Agreement which has been incorporated into this Ordinance for all purposes.

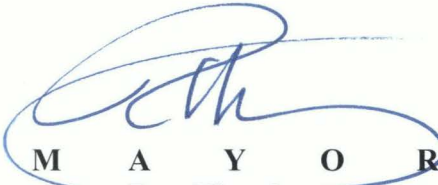
SECTION 3. TIF Division staff is authorized to amend the Midtown TIRZ Project and Finance Plans to include this Project.

SECTION 4. Funding for any projects through the Midtown TIRZ will be paid from Fund 29086024, Cost Center 8002900001 and General Ledger 5201040. Total funding should not exceed \$25,000.00 for the duration of this agreement.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.


SECTION 6. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 20th day of May, 2021.




M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

May 20, 2021

Item: 18

Enactment Number:

File Number: 21-3259

2021-05-20-0363

Ordinance approving a Professional Services Agreement with TXP, Inc using funds from the Midtown TIRZ in the amount of \$25,000.00 for a fiscal impact study for underground conversion of overhead utilities on the Broadway Street Corridor. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]

Councilmember John Courage made a motion to approve. Councilmember Rebecca Viagran seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

VR
05/20/21
Item No. 18

EXHIBIT A

**PROFESSIONAL SERVICES AGREEMENT
FOR**

**IMPACT STUDY FOR UNDERGROUND CONVERSION OF OVERHEAD UTILITIES ON
THE BROADWAY STREET CORRIDOR**

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 and TXP, Inc ("Contractor"), by and through its authorized representative, both of which may be referred to collectively as the "Parties."

The Parties agree, and by their execution are bound, to the mutual obligations contained and to the performance and accomplishment of the tasks described in this Agreement.

I. DEFINITIONS

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

"CCDO" is defined as the City of San Antonio's Center City Development and Operations Department.

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

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

II. RECITALS

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City through Ordinance No. 2008-12-11-1134 established Tax Increment Reinvestment Zone Number Thirty-One, San Antonio, Texas, known as the Midtown TIRZ ("TIRZ"), to promote development and redevelopment which would not otherwise occur solely through private investment in the reasonably foreseeable future and created the board of the TIRZ ("Board") and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, the City and the Board recognize the importance of their continued role in development activities and actively participate in funding of projects that enhance the value of all the taxable real property in the TIRZ and benefit the City; and

WHEREAS, based on a review of existing literature, the environmental and social benefits of converting utilities from overhead to underground are well established. However, the fiscal impacts of utility conversions are highly dependent on the context in which the conversion is proposed. On April 5, 2021, CCDO applied for funding from the City's Tax Increment Financing ("TIF") Program in order

to contract with Contractor to undertake the development of an Impact Study for Underground Conversion of Overhead Utilities on the Broadway Street Corridor ("Study")

WHEREAS, the purpose of this study is to briefly analyze the fiscal impact of converting utilities from overhead to underground for the Upper Segment Phase I of the Broadway Street Corridor which spans from IH-35 to Mulberry Avenue for a total length of approximately 1.15 miles. The results of the study will be used to determine if additional funding should be identified for the incremental increase in cost to convert utilities along this segment of the corridor project.; and

WHEREAS, in accordance with Section 311.010 (b) of the Act, the Board is authorized to enter into agreements to dedicate revenue from the tax increment fund to pay for any project costs that benefit the TIRZ; and

WHEREAS, on May 11, 2021, the Board adopted Resolution T31 _____ attached and incorporated into this Agreement as **Exhibit A**, authorizing approval of the execution of this Agreement to provide a funding commitment in an amount not to exceed TWENTY-FIVE THOUSAND DOLLARS in TIRZ funds for costs related to the Study; and

WHEREAS, pursuant to said authority above, the Parties hereby enter into a binding agreement to undertake the project. **NOW THEREFORE**,

In consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the Parties severally and collectively agree, and by the execution hereof are bound, to the performance and accomplishment of tasks hereinafter described.

III. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon signature and will terminate upon completion of all terms or on June 30, 2021, whichever is sooner.

IV. SCOPE OF SERVICES

3.1 Contractor shall undertake and complete an impact study to briefly identify the fiscal, environmental, and social benefits to the community of converting utilities from overhead to underground for the Upper Segment Phase I of the Broadway Street Corridor. This segment spans from IH-35 to Mulberry Avenue for a total length of approximately 1.15 miles. The results of the study will be used to determine if additional funding should be identified for the incremental increase in cost to convert utilities along this segment of the corridor project and to deploy strategies outlined in the study, as appropriate, for securing funding for the cost increase. The Project shall include the tasks and deliverables set forth in the proposal and scope of work, attached hereto and incorporated for all purposes as **Exhibit B**. The Project shall draw upon national best practices of similarly positioned communities. The Project shall incorporate input from area stakeholders, organizations, employers, residents, non-profits, developers and other institutions through interviews and conversations, as well as researched and collected data, to ascertain the economic challenges and opportunities of the Study Area.

3.2 All work shall be provided by TXP, Inc.

3.3 All work performed, displayed, provided by Contractor shall be performed to the satisfaction of CCDO. The determination made by CCDO shall be final, binding and conclusive on all Parties. If applicable to the type of services provided, City in its sole discretion, will decide whether or not to accept the report prepared by Contractor.

3.5 City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to CCDO. CCDO shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to CCDO; however, CCDO shall have no obligation to terminate and may withhold payment for any unsatisfactory work, even should CCDO elect not to terminate.

V. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by CCDO, of all services and activities set forth in this Agreement, CCDO agrees to pay Contractor an amount not to exceed Twenty-five Thousand Dollars and No Cents (\$25,000.00) as total compensation, to be paid to Contractor as follows:

4.1.1 CCDO shall pay Twenty-Five Thousand Dollars and No Cents (\$25,000.00) upon completion of this Agreement and receipt of invoice from Contractor.

4.1.2 Payment is subject to the provision in Sections 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, and Exhibit B.

4.2 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all Parties.

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

VI. OWNERSHIP OF DOCUMENTS

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

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents, illustrations, photos charts, graphs, and information, City has the right to use all

such writings, documents and information as City desires, without restriction.

5.3 This Section is not intended to, and shall not, affect any of Contractor's intellectual property rights in any materials other than the final deliverables provided to City, such as discovery methods or processes, preliminary concepts, project files, works in progress, and individual design elements. Contractor expressly retains all of its right, title, and interest in such materials.

5.4 City grants Contractor and its affiliates, successors, and assigns a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use the works developed pursuant to this Agreement or any portion thereof for promotional purposes. "Promotional purposes" include, but are not limited to, displaying on any Contractor or third party website and including in any portfolios or other displays of Contractor's work.

VII. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("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, and the record retention period established in this Agreement, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor shall retain any and all documents produced as a result of services provided under this Agreement for a period of four (4) years ("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, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor 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 Contractor to return said documents to City prior to or at the conclusion of said retention.

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

VIII. 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 of this Agreement.

7.2 Termination Without Cause. This Agreement may be terminated by either Party upon 15 days written notice, which notice shall be provided in accordance with Article VIII. Notice.

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

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

7.4 Defaults With Opportunity for Cure. Should Contractor 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. Contractor shall have 15 days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-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 Contractor'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 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant required by this Agreement

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties, 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, Contractor shall affect 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 Contractor, or provided to Contractor, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.7 Within 45 days of the effective date of completion, or termination or expiration of this Agreement, Contractor 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 Contractor to submit its claims within said 45 days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor 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, Contractor shall cease all operations of work being performed by Contractor 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 Contractor for any default or other action.

IX. NOTICE

8.1 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 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:

City of San Antonio
Attn: John Jacks, Director, CCDO

San Antonio, Texas 78207

If intended for Contractor, to:

TXP, Inc.
1310 South First Street #105
Austin, Texas 78704

X. [Reserved]

XI. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the CCDO, which shall be clearly labeled "**Underground Utilities Impact Study**" 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. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to 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 World Heritage Office. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

10.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal 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 contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension, at Contractor'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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors 	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate.
4. Business Automobile Liability <ul style="list-style-type: none"> 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 two (2) years subsequent to the completion of the professional service.

10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide 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 City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio

San Antonio, Texas 7828_____

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

- Name 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 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 City where 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 City.
- Provide advance written notice directly to City of any suspension or non-renewal 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, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City 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 City shall be limited to insurance coverage provided.

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

XII. INDEMNIFICATION

11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of 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 CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, 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 CONTRACTOR 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 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 and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this Article.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City-approved defense counsel within

seven days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor 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 by any employee of Contractor, 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 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 Contractor or any subcontractor under worker's compensation or other employee benefit acts.

XIII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor 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 may be sub-contractors or the employees of Contractor.

12.2 It is City's understanding, and this Agreement is made in reliance thereon, that Contractor intends to perform all the work under this Agreement. The use of any additional subcontractors shall require the prior approval of City.

12.3 Any work or services approved for subcontracting 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 Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, 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 City.

12.4 Except as otherwise stated in this Agreement, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, 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 Contractor 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 Contractor 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 Contractor shall in no event release Contractor from any obligation under the terms of this

Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIV. INDEPENDENT CONTRACTOR

13.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed under this Agreement 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 respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The Parties 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 Contractor under this Agreement and that the Contractor has no authority to bind the City.

XV. CONFLICT OF INTEREST

14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.2 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.3 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

XVI. AMENDMENTS

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to its terms shall be affected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance, when required.

XVIII. SEVERABILITY

16.1 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 that such invalidity, illegality or unenforceability shall not affect any other clause or provision and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained; it is also the intention of the Parties 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

17.1 Contractor warrants and certifies that Contractor and any other person designated to provide services under this Agreement 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 under this Agreement.

XIX. COMPLIANCE

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

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

18.3 It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of **employment discrimination, harassment and sexual harassment**. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute **employment discrimination, harassment, or sexual harassment**, is prohibited. **Harassment** and **sexual harassment** are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities

Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged **employment discrimination, harassment, or sexual harassment** or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. Contractor shall comply with this policy in all interactions with Contractor's employees and subcontractors, artists and volunteers, if any, under this Agreement.

XX. NONWAIVER OF PERFORMANCE

19.1 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 contained in this Agreement. 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 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 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 XV. 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 under this Agreement or by law or in equity.

XXI. LAW APPLICABLE

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

20.2 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.

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

23.1 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. ENTIRE AGREEMENT

24.1 This Agreement, together with its exhibit, constitutes the final and entire agreement between the Parties 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, unless same be in writing, dated subsequent to the effective date, and duly executed by the Parties in accordance with Article XVI. Amendments.

24.2 Each exhibit referenced below shall be incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

Exhibit A: Resolution T31 _____

Exhibit B: Scope of Services

Signatures on following page

EXECUTED and **AGREED** to be effective _____, 20____.

CITY OF SAN ANTONIO

CONTRACTOR

Erik Walsh
City Manager

Travis D. James
TXP, Inc.

ATTEST AND SEAL:

APPROVED AS TO FORM:

Tina Flores, City Clerk
Date: _____

Assistant City Attorney

TAX INCREMENT REINVESTMENT ZONE #31

Executed as an acknowledgement that the TIRZ #31 tax increment fund shall serve as the source of funding for the grant funds provided under this agreement

Louis Fox
Presiding Officer

EXHIBIT B

Impact Study for Underground Conversion of Overhead Utilities on the Broadway Street Corridor

Scope of Work

The study will result in a brief report and slide deck (e.g. PowerPoint presentation) which outlines the fiscal impact of converting utilities from overhead to underground for the Upper Segment Phase I of the Broadway Street Corridor. The report should consider previous studies conducted in other communities, a review of relevant literature/academic research, applicable market and demographic trends, interviews with appropriate stakeholders, and any other materials as necessary.

Potential factors resulting in a fiscal impact could include, but are not limited to:

- Property Taxes – change in tax revenues to City, County, school district, and other taxing entities
- Development – improved aesthetics of built environment; more developable land in a highly urban context (i.e. greater ability to build up to the sidewalk/ROW); cost to convert a system segment to underground may be mitigated by factors such as density of development and existing utility work. In other words, the cost of conversion may be lower if roadway improvement projects are already planned. Additionally, in high density areas with many electrical customers, the added cost of conversion can be spread among more rate payers, lessening the per capita impact
- Landscaping – reduced tree trimming costs to minimize contact with overhead wires; availability of shade tree species normally avoided due to interference with overhead utilities
- Electric Revenues – reduction in revenue losses due to temporary outages from weather events
- Public Safety – reduction of motor vehicle crashes involving utility poles, live-wire contact injuries/deaths, fires, and allows more space to be allocated to pedestrian and bicycle facilities
- Post-Storm Rebuild – lower cost to restore system to areas damaged by major storms, including hurricanes and tornadoes
- Household Impacts – reduction in loss of household goods, especially food, due to outages; lowered health risks due to lack of power, such as heat stroke, hypothermia, or exacerbation of health conditions due to lack of power for medical equipment
- Productivity – improved reliability for businesses needing continuity of power, especially medical care providers, manufacturers, food service, information technology, etc.
- Accessibility – facilitates compliance with the ADA for pedestrians

Additional considerations or challenges the Consultant may address could include, but are not limited to:

- Have developers expressed concerns about overhead utilities along the corridor? If so, what impact might conversion have on future development plans?
- Do any climate-related benefits exist for conversion to underground utilities? For example, if severe weather events are expected to increase over time, could this conversion help mitigate for future anticipated interruptions to utility services?

- Are there any concerns regarding underground conversion that warrant maintaining overhead service (e.g. flash flooding, maintenance, etc.)?

Roles

At a minimum, the Consultant, TXP Inc., will:

- Identify and analyze previous studies, relevant literature/academic research, applicable market and demographic trends, and applicable policies and incentives
- Interview relevant stakeholders, including real estate developers, utility providers and/or contractors, engineers, real estate market analysts, neighborhood representatives, City staff, etc.
- Collaborate with the City to identify potential redevelopment sites within the study area for further evaluation and analyze the effects of utility conversion on their redevelopment
- Produce a brief report in Microsoft Word format and slide deck (e.g. PowerPoint presentation) designed to inform the community regarding the benefits and challenges associated with utility conversion within the study area
- Present the findings of the study to the Board of Directors for the Midtown Tax Increment Reinvestment Zone

On an as-needed basis, the City will:

- Provide relevant documents associated with the design and/or construction of the Broadway Street Corridor project (as needed)
- Supply publicly available data regarding properties located within the study area
- Collaborate with the Consultant to identify potential redevelopment sites for study
- Provide other data and technical assistance as reasonably necessary to complete the Scope

Timeline

The study shall begin upon execution of this Professional Services Agreement and be completed within sixty (60) days of execution. Completion shall be defined by submission of the Brief Report and Slide Deck by the Consultant that are determined in writing to be acceptable by the City. The review of draft documents, as applicable, should be factored into the timeline to ensure compliance with the completion deadline mentioned herein. The director of Center City Development & Operations may administratively approve an extension to the deadline as required to successfully complete the Scope of Work. Any extension(s) must be requested in writing by the Consultant with adequate justification for the request and signed by the director of CCDO.

Compensation

The City shall compensate the Consultant for successful completion of the Scope of Work outlined in this document, in an amount not to exceed twenty-five thousand and 0/100 dollars (\$25,000.00). Payment will be issued on a reimbursement basis for work completed, with no more than fifty (50) percent of the project budget to be paid prior to receipt of final deliverables.

EXECUTED and AGREED to be effective _____, 20__.

CITY OF SAN ANTONIO

Erik Walsh
City Manager

CONTRACTOR

Travis D. James
TXP, Inc.

ATTEST AND SEAL:

APPROVED AS TO FORM:

Tina Flores, City Clerk
Date: _____

Assistant City Attorney

TAX INCREMENT REINVESTMENT ZONE #31

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Louis Fox
Presiding Officer