

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PARKS AND RECREATION DEPARTMENT**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa B. Vossmer; Finance; Management and Budget; Legal; File

SUBJECT: Ordinance Selecting Three Firms for On-Call Professional Land Surveying Services for Various Park Design Projects

DATE: October 16, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance selects Vickery & Associates, Inc. (SBE/WBE/DBE), Bain Medina Bain, Inc. (SBE/WBE/DBE) and Sunland Engineering Company (SBE/MBE/DBE) for on-call professional land surveying services for various park land acquisition and design projects and authorizes execution of one year contracts with two optional one year renewals.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The use of on-call professional land surveying services will assist the Parks and Recreation Department's park planning staff in the completion of land acquisition and design work on capital improvement projects. Three firms will be utilized on a rotation basis, as services are needed, for in-house design projects. Work to be completed by these consultants will include preparation of boundary surveys for land acquisition activities, topographic and tree surveys for land development planning and similar assignments as needed to complete capital improvement projects. By having on-call consultants available, design work will proceed more quickly due to reducing the number of weeks devoted to consultant selection procedures for each individual project.

The firms will provide on-call professional services for a period of one year from the date of the fully executed agreement, with an option for two additional one year renewals, subject to approval of the Director of Parks and Recreation. A standard form agreement will be executed and it will include specific deliverables, quantifiable performance measures and default language. Fees for services will range from an estimated \$500.00 to \$25,000.00.

After a particular project is identified, then a proposal for services will be received and a specific fee will be negotiated. The consultants will be utilized on a rotating basis, unless the project is large or complex, in which case park design staff may determine to contact all three of the consultants for proposals. Entering into this on-call professional services contract with the City will not guarantee any specific project or amount of work. Other City departments that need to accomplish small surveying projects are also able to utilize these firms.

A public Request for Qualifications and advertisements in local media solicited interested consultants and four firms responded. Representatives from Parks and Recreation, Public Works and Economic Development Departments rated the firms. Criteria included design ability, technical capability, construction administration capability, subconsultants qualifications, suitability to project types/scope, special considerations for expertise regarding codes, ADA, regulatory criteria, etc., and Small Business Economic Development Advocacy. The scoring matrix is attached. The top three firms are recommended for selection, which include:

Vickery & Associates, Inc. (SBE/WBE/DBE)
Bain Medina Bain, Inc. (SBE/WBE/DBE)
Sunland Engineering Company (SBE/MBE/DBE)

POLICY ANALYSIS

The consultants were chosen in accordance with all of the City's consultant selection procedures.

FISCAL IMPACT


There are no direct costs associated with approval of the three recommended firms. Fees for the consultants will vary depending on individual project scope. Once a project is identified, a proposal for services will be received and the consultant fee will be determined. It is anticipated that each consultant will receive three or four projects each year that together will total approximately \$50,000.00. Project budgets will be established in accordance with current City policies. Council action may be required to allocate the appropriate funding for the project.

COORDINATION

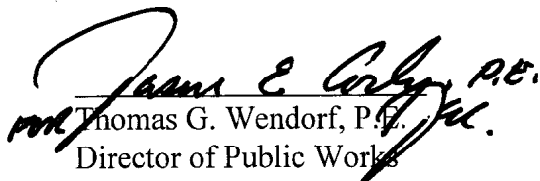
The Consultant Selection Committee and Public Works Department have assisted with this action.

SUPPLEMENTARY COMMENTS

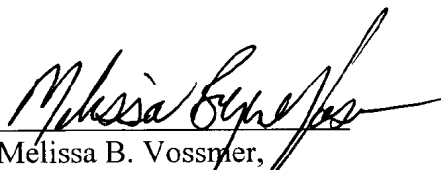
A Discretionary Contracts Disclosure Form is attached from each of the three firms.



Malcolm Matthews,
Director of Parks and Recreation

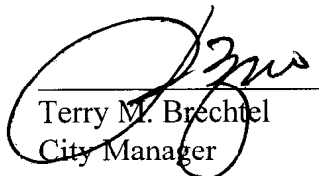


Thomas G. Wendorf, P.E.
Director of Public Works



Melissa B. Vossmer,
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

ARCHITECT/ENGINEER STATEMENT OF INTEREST REVIEW
CITY OF SAN ANTONIO

20.5.14 : ~~20.5.14~~ 11.5.02

City of San Antonio Discretionary Contracts Disclosure

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

N/A

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

Vickrey & Associates, Inc.

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

N/A

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual entity who would be a party to the discretionary contract.

N/A

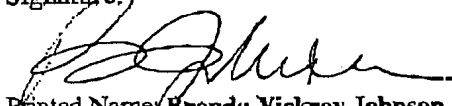
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for the City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount	Date of Contribution
David Carpenter	425.00	2001, 2002
Ed Garza	4,960.00	2001, 2002
Bonnie Conner	600.00	2001, 2002
Bobby Perez	390.00	2001, 2002
Enrique Barrera	500.00	2002
John Sanders	500.00	2001
Carol Schubert	700.00	2001, 2002
Toni Moorhouse	600.00	2002, 2003
Julian Castro	200.00	2002

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

Signature: 	Title: President Company: Vickrey & Associates, Inc.	Date: April 21, 2003
Printed Name: Brenda Vickrey Johnson		

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust unincorporated association, or any other entity recognized by law.

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.
COSA, Form 1050-32-2, Discretionary Contracts.doc, 09/12/02

City of San Antonio
Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1& 2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under 91), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Pamela Bain, as President of Bain Medina Bain, Inc.

(2) the identity of any business entity that would be a party to the discretionary contract:

Bain Medina Bain, Inc. would be the sole business entity for this contract.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

Not Applicable

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

City of San Antonio Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2

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3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Not Applicable

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly or indirectly to any current or former member of City Council, and candidate for City Council, or to any political action committee that contributes to City Council Elections, by any individual or business entity whose identity must be disclosed under (1), (2), or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
David Carpenter	\$140.00	April 2001
CECPAC	\$360.00	March 2001
Friends of Ed Garza and Nelson Wolff	\$150.00/each	September and October 2002
Friends of Bonnie Conner, Robert Tejeda, Carroll Schubert, Bobby Perez, Toni Moorehouse, Lyle Larson, David Carpenter, Julian Castro, Paul Elizondo and Enrique Barrera	\$50.00/each	July thru October 2002
Toni Moorehouse, Enrique Barrera and Carroll Schubert	\$70.00/each	May 2003

Disclosure in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

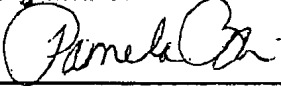
City of San Antonio
Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

** This form is required to be supplemented in the event there is any change in the information under 91), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Signature: 	Title: President Company: Bain Medina Bain, Inc.	Date: May 2, 2003

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract;

N/A

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:
Sunland Engineering Company
and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

N/A

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary* business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Mr. Baltazar (Walter) R. Serna, Jr.

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

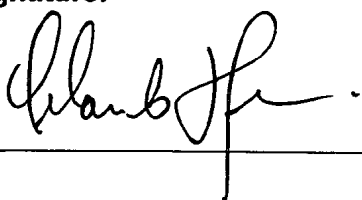
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Phil Cortez	\$300	4/15/03
Tom Lopez	\$500	4/22/03
John Clamp	\$500	5/02/03
Tom Aguillon	\$500	5/02/03
Edward Garza	\$250	8/21/01
Edward Garza	\$500	11/29/01

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: C.E.O. Company: Sunland Engineering Co.	Date: 5/6/03

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**PROFESSIONAL SERVICES AGREEMENT
FOR
SURVEYING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

**AGREEMENT FOR
ON – CALL SURVEYING SERVICES**

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as “**CITY**”), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved on the _____ day of _____, 2003 and _____ Vickrey & Associates, Inc. _____, by _____ and through its _____ President _____, _____ Brenda Vickrey Johnson _____ (hereinafter referred to as “**SURVEYOR**”), both of which may be referred to herein collectively as the “**PARTIES**”.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **SURVEYOR** do hereby agree as follows:

I. DEFINITIONS

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

1.1 “Director” means the director of **CITY**’s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 “Project” means the **ON – CALL SURVEYING SERVICES** Project of **CITY** for which **SURVEYOR**’s services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 “Ab Initio” means from the beginning; from the first act; from the inception. *See Black’s Law Dictionary, 5th Ed., © 1983.*

1.4 “Respondeat Superior” means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black’s Law Dictionary, 5th Ed., © 1983.*

1.5 The term “Parcel” as used herein means any continuous tract of land, or contiguous tracts, under the same ownership, whether or not such land is divided or subdivided for any other purposes. For example, continuous or contiguous tracts under the same ownership that are divided into multiple tax parcels, or that have been obtained by the ownership in multiple transactions, or the have been subdivided by the owner or owners will be deemed to be a single parcel for purposes this of this Agreement.

II. PERIOD OF SERVICE

This AGREEMENT shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services. Provided, however, the rates established in Attachment "B" shall be in effect for first two years of this contract only. Any work performed by SURVEYOR past this two year time shall be paid for at a fee established by mutual agreement of the parties.

III. SCOPE OF SERVICES

3.1 **SURVEYOR** shall not commence work until **SURVEYOR** has been thoroughly briefed on the scope of Project, and has been notified in writing by Director to proceed. Should the scope subsequently change, either party may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed for additional services in Article V, Compensation, and cannot substantially alter the original scope of this AGREEMENT.

3.2 **SURVEYOR**, in consideration for the compensation herein provided, shall render the professional services necessary for the Project.

3.3 **SURVEYOR** shall be represented by a registered professional land surveyor licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings and other meetings as may be required by the Project development process. All final submittals shall carry the signature and seal with the registered professional land surveyor's name and license number, with the date of the submittal adjacent thereto.

3.4 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **SURVEYOR** agrees to perform all work required by this Scope of Services.

3.4.1 ATTACHMENT "A" (Scope of Services and Work Authorization)

3.4.2 ATTACHMENT "B" – Fee Schedule

3.4.3 ATTACHMENT "C" – Production Schedule

IV. COORDINATION WITH THE CITY

4.1 SURVEYOR shall hold periodic conferences with Director, so that the project, as developed, shall have the full benefit of CITY's experience and knowledge of existing needs and facilities and be consistent with its current policies and standards. CITY shall make available, for SURVEYOR's use maps, field notes, and other data in its possession relative to this Project as may be requested by SURVEYOR at no cost to SURVEYOR.

4.2 Director shall act on behalf of CITY with respect to the work performed under this AGREEMENT. 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 SURVEYOR's services.

4.3 CITY shall provide written notice to the SURVEYOR of any errors or omissions discovered in the SURVEYOR's services, or performance, or of any development that affects the scope or timing of SURVEYOR's services.

V. COMPENSATION

5.1 For and in consideration of the services to be rendered by SURVEYOR, CITY shall pay SURVEYOR the fees set forth in ATTACHMENT "B."

5.2 Nothing contained in this AGREEMENT shall require CITY to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this AGREEMENT. CITY shall not be required to make any payments to SURVEYOR at any time SURVEYOR is in default under this AGREEMENT.

5.3 BASIS FOR COMPENSATION

A. The total fee for SURVEYOR's work [as defined in the Scope of Services] will be determined on a project by project basis as projects are identified and approved by future Council Action in reference to this agreement. The total fee shall not exceed the total amount of **\$25,000.00** for any one specific project.

B. SURVEYOR may submit invoices for payment on a monthly basis for all completed surveys. SURVEYOR may be paid after the Director has approved the survey, errors and omissions will delay payment until corrections are completed and reviewed. SURVEYOR must submit a written progress report detailing work performed for the billing period reflected in the invoice.

5.4 **MODIFICATIONS** - SURVEYOR and CITY acknowledge the fact that the base fee as determined in section 5.3(A) above has been established predicated upon the total estimated costs of services to be rendered under the AGREEMENT. For additional services, compensation shall be subject to renegotiations in accordance with section 5.5 below.

5.5 COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

SURVEYOR may be required to perform the additional services listed in 5.5(B) below, subject to appropriations having been made therefore, in connection with this AGREEMENT. Should **SURVEYOR** be directed in writing by Director to perform these services, compensation shall be paid by **CITY** to **SURVEYOR** as authorized in writing by Director, as follows:

A. The basis for compensation for additional services may be in one or more of the following forms:

1. Rate for testimony of principals to be negotiated.
2. Non-Principal - Salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded.
3. Principal - hourly rate set forth in 5.5(D) herein with a stated maximum not to be exceeded.
4. Reimbursement of non-labor expenses and **CITY** directed subcontract expenses at invoice cost plus a 15% service charge.
5. Lump sum per item of work to be negotiated.
6. Lump sum to be negotiated.

B. Additional services include, but are not limited to the following:

1. Assistance to **CITY** as an expert witness in any litigation with third parties, arising from the Project.
2. Detailed measurements and surveys for exploration for utilities, if required.
3. Tree surveys.

C. Salary Cost - Salary cost is defined as the cost of salaries of draftsmen, stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

- (i) The amount of customary and statutory benefits of all personnel other than Principals of the Surveying Firm will be considered equal to 45 % of salaries or wages.

D. Principals of the Surveying Firm - For the purpose of this provision, the Principals of the Surveying Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

<u>Principal Name</u>	<u>Hourly Charge</u>
BRENDA VICKREY JOHNSON	140
STEPHEN HORVATH	140
Robert Leininger	140

5.6 MAXIMUM COMPENSATION FOR ADDITIONAL SERVICES – Total cumulative costs for the additional services listed in Section 5.5 or in Article VI below shall not exceed that amount appropriated by CITY as set forth in the ordinance authorizing this AGREEMENT, without prior authorization of the San Antonio City Council by passage of an ordinance therefore.

VI. REVISIONS TO DRAWINGS

SURVEYOR shall provide, at no expense to **CITY**, reasonable minor revisions to any survey, whether previously approved and accepted, as may be required to satisfy the scope of services established by this AGREEMENT.

VII. OWNERSHIP OF DOCUMENTS

7.1 **SURVEYOR** acknowledges and agrees that **CITY** shall own exclusively 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 shall be used as **CITY** desires and shall be delivered to **CITY** at no additional cost to **CITY** upon request or completion or termination of this AGREEMENT without restriction on future use.

7.2 **SURVEYOR** agrees and covenants to protect any and all proprietary rights of **CITY** in any materials provided to **SURVEYOR**. Such protection of proprietary rights by **SURVEYOR** 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 **SURVEYOR** by **CITY** shall not be released to any third party without the consent of **CITY** and shall be returned intact to **CITY** upon completion or termination of this AGREEMENT, upon the request of **CITY**.

7.3 **SURVEYOR** hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this AGREEMENT to **CITY**, including all moral 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 **SURVEYOR**. All reports, maps, project logos, drawings or other copyrightable work produced under this AGREEMENT shall become the property of **CITY** (excluding any instrument of services, unless otherwise specified herein). **SURVEYOR** shall, at its 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.

7.4 **SURVEYOR** may make copies of any and all documents and items for its files. **SURVEYOR** shall have no liability for changes made to or use of the drawings, specifications and other documents by other surveyors, or other persons, subsequent to the completion of the Project. **CITY** shall require that any such change or other use shall be appropriately marked to reflect what was changed or modified.

7.5 Copies of documents that may be relied upon by **CITY** are limited to the printed copies (also known as hard copies) that are sealed and signed by **SURVEYOR**. Files in electronic media

format of text, data, graphics, or other types that are furnished by **SURVEYOR** to **CITY** are only for convenience of **CITY**. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

VIII. TERMINATION AND/OR SUSPENSION OF WORK

8.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

8.2 Termination Without Cause.

8.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article XVII, Notices. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

8.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **SURVEYOR** written notice to proceed pursuant to Article III, Section 3.1, should Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article XVII, Notices and shall be effective upon delivery by **CITY** in accordance with Article XVII.

8.2.3 **CITY** shall equitably compensate **SURVEYOR** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **SURVEYOR** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

8.3 Defaults With Opportunity for Cure.

Should **SURVEYOR** fail to provide the required documents required by Article III, Scope of Services by the due dates established in Article III, Attachment C, Production Schedule in acceptable form, as indicated in said Scope of Services as approved by Director, same shall be considered a default. However, Parties agree that no default shall be considered to occur where **SURVEYOR's** failure to provide the documents is directly caused by the actions of **CITY**. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **SURVEYOR** shall have ten (10) days after receipt of the written notice, in accordance with Article XVII, Notices, to cure such default. If **SURVEYOR** fails to cure the default within such ten-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 contractor to complete the work required in this AGREEMENT. **CITY** shall also have the right to offset the cost of said new CONTRACT with a new contractor against **SURVEYOR'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.

8.4 Termination For Cause. Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

8.4.1 **SURVEYOR** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **SURVEYOR's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

8.4.2 **SURVEYOR** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT, except those events of default for which an opportunity to cure is provided herein; however, if such default as provided in Section 8.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:

(A) **SURVEYOR** fails to cure a default listed in Section 8.3 within the time period required for cure; or

(B) **SURVEYOR** is in default as provided in Section 8.3 on more than one occasion in any consecutive twelve (12) month period.

8.4.3 **SURVEYOR** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

8.4.4 **SURVEYOR** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **SURVEYOR's** assets or properties; or

8.4.5 **SURVEYOR** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or

8.4.6 **SURVEYOR** violates any rule, regulation or law by which **SURVEYOR** is bound or shall be bound while and in performing the services required under this AGREEMENT.

8.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

8.6 Effect of Termination. Notwithstanding Section 8.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **SURVEYOR** specifying the effective date of termination, notice of which shall be given in accordance with Article XVII, Notices.

- 8.6.1 Regardless of how this AGREEMENT is terminated, and subject to 8.6.2, **SURVEYOR** 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 specifications and reproducibles of all completed or partially completed work prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **SURVEYOR**, or provided to **SURVEYOR**, hereunder in accordance with Article VII, Ownership of Documents. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **SURVEYOR's** sole cost and expense. Payment of compensation due or to become due to **SURVEYOR** is conditioned upon delivery of all such documents.
- 8.6.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **SURVEYOR** 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 **SURVEYOR** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **SURVEYOR** of any and all right or claims to collect moneys that **SURVEYOR** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.
- 8.6.3 Upon the effective date of expiration or termination of this AGREEMENT, **SURVEYOR** shall cease all operations of work being performed by **SURVEYOR** or any of its subcontractors pursuant to this AGREEMENT.
- 8.6.4 **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 **SURVEYOR** for any default hereunder or other action.

8.7 Right of **CITY** to Suspend Giving Rise to Right of **SURVEYOR** to Terminate.

8.7.1 **CITY** may suspend this AGREEMENT at the end of any phase for the convenience of **CITY** by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article XVII, Notices, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **SURVEYOR's** receipt of said notice.

8.7.2 **SURVEYOR** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **SURVEYOR** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article XVII, Notices, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

8.8 Procedures for **SURVEYOR** to follow upon Receipt of Notice of Suspension.

8.8.1 Upon receipt of written notice of suspension, **SURVEYOR** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.

8.8.2 **SURVEYOR** shall prepare a statement showing in detail the services performed under this agreement prior to the effective date of suspension.

8.8.3 All completed or partially completed work prepared under this agreement prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **SURVEYOR** until such time as **SURVEYOR** may exercise the right to terminate.

8.8.4 In the event that **SURVEYOR** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **SURVEYOR's** notice of termination, **SURVEYOR** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 8.8.4 shall prevent **SURVEYOR** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

8.8.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **SURVEYOR**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **SURVEYOR's** notice of termination.

8.8.6 Upon the above conditions being met, **CITY** shall pay **SURVEYOR** 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 previous payments of the fee.

8.8.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **SURVEYOR** acknowledges this duty on the part of **CITY**. To this end, **SURVEYOR** understands that failure of **SURVEYOR** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **SURVEYOR** of any portion of the fee for which **SURVEYOR** did not supply such necessary statements and/or documents.

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this AGREEMENT, **SURVEYOR** shall furnish an original completed Certificate of Insurance to **CITY's** Public Works Department and **CITY's** Risk Management Division, and shall be clearly labeled "ON - CALL SURVEYING SERVICES", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY's** Public Works Department and **CITY's** Risk Management Office, and no officer or employee shall have authority to waive this requirement.

9.2 **SURVEYOR's** financial integrity is of interest to **CITY**, therefore, subject to **SURVEYOR's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **SURVEYOR** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **SURVEYOR's** sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess

c. Products/completed operations d. Personal Injury e. Contractual liability	liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 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 negligent act, malpractice, error or omission in professional services.

9.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **SURVEYOR** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article IX herein within 10 days of the requested change.

9.4 **SURVEYOR** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds 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 the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

9.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by **CITY**, **SURVEYOR** shall notify **CITY** of such and shall give such notices not less than thirty (30) days prior to the change, if **SURVEYOR** knows of said change in advance, or ten (10) days notice after the change, if the **SURVEYOR** did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department - Capital Programs	Risk Management
P.O. Box 839966	506 Dolorosa
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

9.6 If **SURVEYOR** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **SURVEYOR** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **SURVEYOR'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 **SURVEYOR** to stop work hereunder, and/or withhold any payment(s) which become due to **SURVEYOR** hereunder until **SURVEYOR** demonstrates compliance with the requirements hereof. A stop work order given to **SURVEYOR** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VIII, Section 8.7.

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

9.8 It is agreed that **SURVEYOR's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this AGREEMENT.

X. INDEMNIFICATION

10.1 SURVEYOR, whose work product is the subject of this AGREEMENT for surveying services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY SURVEYOR'S NEGLIGENT ACT, ERROR, OR OMISSION OF SURVEYOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, SURVEYOR OR SUBSURVEYOR OF SURVEYOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or 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 SURVEYOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF

COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

10.2 SURVEYOR shall advise CITY in writing within 24 hours of any claim or demand against CITY or SURVEYOR known to SURVEYOR related to or arising out of SURVEYOR's activities under this AGREEMENT.

10.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XI. SURVEYOR'S LIABILITY

11.1 Acceptance of the final plats and field notes by CITY shall not constitute nor be deemed a release of the responsibility and liability of SURVEYOR, its employees, associates, agents or subcontractors for the accuracy and competency of their documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the documents and work prepared by said SURVEYOR, its employees, subcontractors, and agents.

11.2 Standard of Care: Services provided by SURVEYOR under this AGREEMENT will 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.

XII. LICENSING

SURVEYOR shall utilize qualified personnel to complete the work to be performed under this AGREEMENT, and all work performed under this AGREEMENT is to be executed under the direct supervision of a registered professional land surveyor as required by state law. Persons retained to perform work pursuant to this AGREEMENT shall be the employees or subcontractors of SURVEYOR. SURVEYOR or its subcontractors shall perform all necessary work.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

13.1 SURVEYOR may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the written consent of CITY.

13.2 As a condition of consent, if same is given, SURVEYOR shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor SURVEYOR, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by CITY in accordance with this Article.

13.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **SURVEYOR** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VIII, Termination, and all rights, titles and interest of **SURVEYOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **SURVEYOR** shall in no event release **SURVEYOR** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **SURVEYOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

13.4 **SURVEYOR** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VIII, Termination.

XIV. INDEPENDENT CONTRACTOR

14.1 **SURVEYOR** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **SURVEYOR** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **SURVEYOR**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **SURVEYOR**.

14.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **SURVEYOR** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **SURVEYOR**.

XV. EQUAL EMPLOYMENT OPPORTUNITY

SURVEYOR shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **SURVEYOR** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XVI. SBEDA REQUIREMENTS

16.1 **SURVEYOR** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African-American ("AABE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

16.2 **SURVEYOR** agrees to implement the plan submitted in **SURVEYOR**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **SURVEYOR** agrees to be in full compliance with this article by meeting the percentages listed in **SURVEYOR**'s Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **SURVEYOR** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **SURVEYOR**'s Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **SURVEYOR** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **SURVEYOR**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

16.3 **SURVEYOR** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. **SURVEYOR** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/AABE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **SURVEYOR** is not in compliance with this article, **CITY** shall give notice of non-compliance to **SURVEYOR**. **SURVEYOR** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject **SURVEYOR** to any of the penalties listed in **CITY** of San

Antonio Ordinance No. 77758, at **CITY's** option. Further, such failure may be considered a default for which **CITY** may terminate this AGREEMENT in accordance with Article VIII, Termination.

16.4 **SURVEYOR** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

16.5 In all events, **SURVEYOR** shall comply with the **CITY's** Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

16.6 It is **CITY's** understanding, and this AGREEMENT is made in reliance thereon, that **SURVEYOR**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to **CITY's** Request for Interest Statement.

16.7 Any work or services subcontracted by **SURVEYOR** shall be by written contract, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **SURVEYOR**.

16.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **SURVEYOR**, for performance or services or payment of fees.

XVII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, 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 on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

CITY of San Antonio
Public Works Department – Capital Programs
Attn: Bill Krause, Capital Programs Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for SURVEYOR, to:

Vickrey & Associates, Inc.
12940 Country Parkway
San Antonio, Texas 78216-2004
Attn: Brenda Vickrey Johnson, President

XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

18.1 **SURVEYOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

18.2 **SURVEYOR** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **SURVEYOR** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

XIX. SOLICITATION

SURVEYOR warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **SURVEYOR**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **SURVEYOR**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

XX. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

XXI. FAMILIARITY WITH LAW AND CONTRACT TERMS

SURVEYOR represents that, prior to signing this AGREEMENT, **SURVEYOR** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

XXII. APPLICABLE LAW

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIII. 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 Bexar County, Texas.

XXIV. SEVERABILITY

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

XV. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XVI. SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXVII. NON-WAIVER OF PERFORMANCE

27.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

27.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVIII. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXIX. LEGAL AUTHORITY

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

XXX. INCORPORATION OF ATTACHMENTS

SURVEYOR understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services and Work Authorization)

ATTACHMENT "B" (Fee Schedule)

ATTACHMENT "C" (Production Schedule)

In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail.

XXXI. ENTIRE AGREEMENT

31.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXX, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

31.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE 11th DAY OF Sept., 2003.


CITY:

CITY OF SAN ANTONIO

SURVEYOR:

VICKREY & ASSOCIATES, INC.

CITY MANAGER


President

APPROVED AS TO FORM:

CITY ATTORNEY

Date

ATTACHMENT "A"

SCOPE OF SERVICES AND WORK AUTHORIZATION

A. The SURVEYOR shall furnish, as specific projects are identified, a survey of each parcel assigned and expressly warrants that each such document will be properly prepared and contain the signature of a Registered Professional Land Surveyor.

B. The SURVEYOR shall be responsible for performing all the assigned requirements to complete the work and shall also employ properly licensed individuals to perform the work where such credentials are required by law.

C. The SURVEYOR understands and accepts that this project agreement consists of an on-call status and will require maintaining a flexible schedule as parcels identified in specific projects become available on a long term schedule which is crucial to performing these services.

D. Seven sets of metes & bounds and drawings shall be submitted. All documents shall be on 8-1/2" X 11" paper when possible, drawings shall be at an appropriate size, and shall be delivered to the following address:

City of San Antonio
Park Project Services Division
Parks and Recreation Department
506 Dolorosa - Room 103
San Antonio, Texas 78283

E. Property owners shall be contacted and informed of the pending survey by the SURVEYOR. If absentee owners of the property are involved, the contact may be conducted via telephone, facsimile or by mail.

F. SURVEYOR will obtain from the property owner access permission for surveying for the subject property.

G. CITY will provide SURVEYOR with a copy of any conveyance documents, or surveying information necessary (unless otherwise authorized), of the schematics of the projects, maps, plats for the properties, field notes, environmental assessments, and any other available information to the greatest extent possible to enable the SURVEYOR to fulfill obligations under this Agreement. However, lack of information from the City shall not preclude the SURVEYOR from performing the services agreed herein.

H. The survey shall be prepared in accordance with the standards set forth in "Manual of Practice for Land Surveying in the State of Texas" and shall contain but not be limited to the following:

1. Each survey must be tied to the Texas State Plane Coordinate System using NAD83 or NAD83/93 HARN, Lambert Grid, Texas South Central Zone, unless otherwise instructed by the CITY.

2. Each survey must show at least one state plane coordinate value on the plat in US survey feet units.
3. Each survey must cite Lambert Grid - Texas South Central Zone NAD83 (or NAD83/93 HARN) as the bearing basis.
4. Each survey must show or recite COSA boundaries that have been established by CITY, where applicable.
5. All surface improvements and surface evidence of underground improvements on the tract to be taken as well as proposed improvements, if provided by City, must be located and shown on the plat, unless otherwise instructed by the CITY. Interior fences may not be required.
6. Each plat must include a legend, a graphic scale, and north arrow.
7. Where a boundary is established by a contour line, the datum shall be indicated and at least one benchmark shall be established on the ground and listed on the face of the survey. Where a flood plain boundary is used to establish a parcel boundary, the survey shall cite the source of the flood plain boundary location.
8. When a sale, lease, or easement tract boundary is to be surveyed to a contour line(s), please contact the CITY for specific instructions.
 - a. All surveys will be required to conform to the CITY standards and require deliverables as outlined below:

Descriptions and plats must be submitted on 8-1/2" X 11" paper when possible. Before submitting final descriptions and plats, the surveyor shall fax or mail a preliminary set to the CITY at the following address:

**City of San Antonio, Public Works Department, Capital Programs Division,
Attn: William E. Krause**

Street Address:
114 W. Commerce
San Antonio, Texas 78205
Phone (210) 207-8140

Mailing Address:
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax (210) 207-6553

- b. The CITY shall give prompt notice to SURVEYOR whenever the CITY observes or becomes aware of any error, omission, or other defect in SURVEYOR'S services. However, neither CITY'S failure to notify SURVEYOR of errors, omissions, or defects in SURVEYOR'S services nor the acceptance of the work by the CITY

shall constitute or be deemed a release of the responsibility and liability of **SURVEYOR**, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by **CITY** for any defect in the surveys, reports, or other documents and work prepared by said **SURVEYOR**, its employees, subcontractors, and agents.

- c. After review and approval by **CITY**, the surveyor will submit digital files of the descriptions and plats with the final deliverables either on a 3.5" disk, cd-rom or via e-mail. Field notes should be submitted in ascii text format. AutoCAD drawings should be submitted in R14 format (R12 to R14 are acceptable formats). Seven (7) final signed and sealed originals must be provided by the surveyor after final approval by the **CITY**.

I. **CITY** shall be entitled at any time to review **SURVEYOR**'s files and back up materials for compensation described below, upon notice to **SURVEYOR**. **CITY** shall have forty-five (45) calendar days to review all submittals made by **SURVEYOR**.

J. After the basic Global Positioning Systems (GPS) control has been established, all surveys shall be completed and submitted within 30 days of the date of the written authorization to begin unless prior notification by **SURVEYOR**. Such notice from the **SURVEYOR** shall include the reason for the inability to meet the 30-day deadline and propose a reasonable alternative, subject to the reasonable agreement of the City. Surveys submitted after the 30 days or the arranged due date shall be subject to a 10% penalty that shall accrue bi-monthly. The 30-day period will not start until the surveyor has received all information required to be furnished to the surveyor by the City of San Antonio. Notwithstanding the preceding, **SURVEYOR** shall not be liable or responsible for, and there shall be excluded from the computation of the aforesaid period of time, 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 **SURVEYOR**'S reasonable control, provided that within thirty (30) days from the occurrence of any event for which time for performance by **SURVEYOR** shall be significantly extended under this provision, **SURVEYOR** shall have given written notice to the **CITY** setting forth the reason(s) for such extension and the actual or estimate time thereof.

ATTACHMENT B

FEE SCHEDULE

Future Council Approval will identify each specific project and consideration for the specific project.

To be negotiated on a win-or-lose basis. By

ATTACHMENT C
PRODUCTION SCHEDULE

Future Council Approval will identify each specific project and the production schedule for the specific project.

Project: _____

Surveying Firm: _____

SECTION 1 (Not applicable to total time)

	<u>SCHEDULED</u>	<u>ACTUAL</u>
PRELIMINARY PHASE A: (Days to be Negotiated)		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

SECTION 2

PRELIMINARY PHASE B:

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

DESIGN PHASE

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
Total Contract Time:	_____ Days	_____ Days

BID PHASE & DOCUMENTS

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

BY: _____

Official Title

**PROFESSIONAL SERVICES AGREEMENT
FOR
SURVEYING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

**AGREEMENT FOR
ON – CALL SURVEYING SERVICES**

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as “CITY”), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved on the _____ day of _____, 2003 and _____ Sunland Engineering Company _____, by and through its _____ Vice-President, _____ Javier Arguello _____ (hereinafter referred to as “SURVEYOR”), both of which may be referred to herein collectively as the “PARTIES”.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **SURVEYOR** do hereby agree as follows:

I. DEFINITIONS

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

1.1 “Director” means the director of **CITY**’s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 “Project” means the **ON – CALL SURVEYING SERVICES** Project of **CITY** for which **SURVEYOR**’s services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 “Ab Initio” means from the beginning; from the first act; from the inception. *See Black’s Law Dictionary, 5th Ed., © 1983.*

1.4 “Respondeat Superior” means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black’s Law Dictionary, 5th Ed., © 1983.*

1.5 The term “Parcel” as used herein means any continuous tract of land, or contiguous tracts, under the same ownership, whether or not such land is divided or subdivided for any other purposes. For example, continuous or contiguous tracts under the same ownership that are divided into multiple tax parcels, or that have been obtained by the ownership in multiple transactions, or the have been subdivided by the owner or owners will be deemed to be a single parcel for purposes this of this Agreement.

II. PERIOD OF SERVICE

This AGREEMENT shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services. Provided, however, the rates established in Attachment "B" shall be in effect for first two years of this contract only. Any work performed by SURVEYOR past this two year time shall be paid for at a fee established by mutual agreement of the parties.

III. SCOPE OF SERVICES

3.1 **SURVEYOR** shall not commence work until **SURVEYOR** has been thoroughly briefed on the scope of Project, and has been notified in writing by Director to proceed. Should the scope subsequently change, either party may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed for additional services in Article V, Compensation, and cannot substantially alter the original scope of this AGREEMENT.

3.2 **SURVEYOR**, in consideration for the compensation herein provided, shall render the professional services necessary for the Project.

3.3 **SURVEYOR** shall be represented by a registered professional land surveyor licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings and other meetings as may be required by the Project development process. All final submittals shall carry the signature and seal with the registered professional land surveyor's name and license number, with the date of the submittal adjacent thereto.

3.4 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **SURVEYOR** agrees to perform all work required by this Scope of Services.

3.4.1 ATTACHMENT "A" (Scope of Services and Work Authorization)

3.4.2 ATTACHMENT "B" – Fee Schedule

3.4.3 ATTACHMENT "C" – Production Schedule

IV. COORDINATION WITH THE CITY

4.1 SURVEYOR shall hold periodic conferences with Director, so that the project, as developed, shall have the full benefit of CITY's experience and knowledge of existing needs and facilities and be consistent with its current policies and standards. CITY shall make available, for SURVEYOR's use maps, field notes, and other data in its possession relative to this Project as may be requested by SURVEYOR at no cost to SURVEYOR.

4.2 Director shall act on behalf of CITY with respect to the work performed under this AGREEMENT. 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 SURVEYOR's services.

4.3 CITY shall provide written notice to the SURVEYOR of any errors or omissions discovered in the SURVEYOR's services, or performance, or of any development that affects the scope or timing of SURVEYOR's services.

V. COMPENSATION

5.1 For and in consideration of the services to be rendered by SURVEYOR, CITY shall pay SURVEYOR the fees set forth in ATTACHMENT "B."

5.2 Nothing contained in this AGREEMENT shall require CITY to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this AGREEMENT. CITY shall not be required to make any payments to SURVEYOR at any time SURVEYOR is in default under this AGREEMENT.

5.3 BASIS FOR COMPENSATION

A. The total fee for SURVEYOR's work [as defined in the Scope of Services] will be determined on a project by project basis as projects are identified and approved by future Council Action in reference to this agreement. The total fee shall not exceed the total amount of \$25,000.00 for any one specific project.

B. SURVEYOR may submit invoices for payment on a monthly basis for all completed surveys. SURVEYOR may be paid after the Director has approved the survey, errors and omissions will delay payment until corrections are completed and reviewed. SURVEYOR must submit a written progress report detailing work performed for the billing period reflected in the invoice.

5.4 MODIFICATIONS - SURVEYOR and CITY acknowledge the fact that the base fee as determined in section 5.3(A) above has been established predicated upon the total estimated costs of services to be rendered under the AGREEMENT. For additional services, compensation shall be subject to renegotiations in accordance with section 5.5 below.

5.5 COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

SURVEYOR may be required to perform the additional services listed in 5.5(B) below, subject to appropriations having been made therefore, in connection with this AGREEMENT. Should **SURVEYOR** be directed in writing by Director to perform these services, compensation shall be paid by **CITY** to **SURVEYOR** as authorized in writing by Director, as follows:

A. The basis for compensation for additional services may be in one or more of the following forms:

1. Rate for testimony of principals to be negotiated.
2. Non-Principal - Salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded.
3. Principal – hourly rate set forth in 5.5(D) herein with a stated maximum not to be exceeded.
4. Reimbursement of non-labor expenses and **CITY** directed subcontract expenses at invoice cost plus a 15% service charge.
5. Lump sum per item of work to be negotiated.
6. Lump sum to be negotiated.

B. Additional services include, but are not limited to the following:

1. Assistance to **CITY** as an expert witness in any litigation with third parties, arising from the Project.
2. Detailed measurements and surveys for exploration for utilities, if required.
3. Tree surveys.

C. Salary Cost - Salary cost is defined as the cost of salaries of draftsmen, stenographers, surveymen, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

(i) The amount of customary and statutory benefits of all personnel other than Principals of the Surveying Firm will be considered equal to _____% of salaries or wages.

D. Principals of the Surveying Firm - For the purpose of this provision, the Principals of the Surveying Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

Principal Name

Hourly Charge

5.6 MAXIMUM COMPENSATION FOR ADDITIONAL SERVICES – Total cumulative costs for the additional services listed in Section 5.5 or in Article VI below shall not exceed that amount appropriated by CITY as set forth in the ordinance authorizing this AGREEMENT, without prior authorization of the San Antonio City Council by passage of an ordinance therefore.

VI. REVISIONS TO DRAWINGS

SURVEYOR shall provide, at no expense to **CITY**, reasonable minor revisions to any survey, whether previously approved and accepted, as may be required to satisfy the scope of services established by this AGREEMENT.

VII. OWNERSHIP OF DOCUMENTS

7.1 **SURVEYOR** acknowledges and agrees that **CITY** shall own exclusively 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 shall be used as **CITY** desires and shall be delivered to **CITY** at no additional cost to **CITY** upon request or completion or termination of this AGREEMENT without restriction on future use.

7.2 **SURVEYOR** agrees and covenants to protect any and all proprietary rights of **CITY** in any materials provided to **SURVEYOR**. Such protection of proprietary rights by **SURVEYOR** 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 **SURVEYOR** by **CITY** shall not be released to any third party without the consent of **CITY** and shall be returned intact to **CITY** upon completion or termination of this AGREEMENT, upon the request of **CITY**.

7.3 **SURVEYOR** hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this AGREEMENT to **CITY**, including all moral 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 **SURVEYOR**. All reports, maps, project logos, drawings or other copyrightable work produced under this AGREEMENT shall become the property of **CITY** (excluding any instrument of services, unless otherwise specified herein). **SURVEYOR** shall, at its 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.

7.4 **SURVEYOR** may make copies of any and all documents and items for its files. **SURVEYOR** shall have no liability for changes made to or use of the drawings, specifications and other documents by other surveyors, or other persons, subsequent to the completion of the Project. **CITY** shall require that any such change or other use shall be appropriately marked to reflect what was changed or modified.

7.5 Copies of documents that may be relied upon by **CITY** are limited to the printed copies (also known as hard copies) that are sealed and signed by **SURVEYOR**. Files in electronic media

format of text, data, graphics, or other types that are furnished by **SURVEYOR** to **CITY** are only for convenience of **CITY**. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

VIII. TERMINATION AND/OR SUSPENSION OF WORK

8.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

8.2 Termination Without Cause.

8.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article XVII, Notices. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

8.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **SURVEYOR** written notice to proceed pursuant to Article III, Section 3.1, should Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article XVII, Notices and shall be effective upon delivery by **CITY** in accordance with Article XVII.

8.2.3 **CITY** shall equitably compensate **SURVEYOR** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **SURVEYOR** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

8.3 Defaults With Opportunity for Cure.

Should **SURVEYOR** fail to provide the required documents required by Article III, Scope of Services by the due dates established in Article III, Attachment C, Production Schedule in acceptable form, as indicated in said Scope of Services as approved by Director, same shall be considered a default. However, Parties agree that no default shall be considered to occur where **SURVEYOR's** failure to provide the documents is directly caused by the actions of **CITY**. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **SURVEYOR** shall have ten (10) days after receipt of the written notice, in accordance with Article XVII, Notices, to cure such default. If **SURVEYOR** fails to cure the default within such ten-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 contractor to complete the work required in this AGREEMENT. **CITY** shall also have the right to offset the cost of said new CONTRACT with a new contractor against **SURVEYOR'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.

8.4 **Termination For Cause.** Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

8.4.1 **SURVEYOR** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **SURVEYOR's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

8.4.2 **SURVEYOR** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT, except those events of default for which an opportunity to cure is provided herein; however, if such default as provided in Section 8.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:

(A) **SURVEYOR** fails to cure a default listed in Section 8.3 within the time period required for cure; or

(B) **SURVEYOR** is in default as provided in Section 8.3 on more than one occasion in any consecutive twelve (12) month period.

8.4.3 **SURVEYOR** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

8.4.4 **SURVEYOR** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **SURVEYOR's** assets or properties; or

8.4.5 **SURVEYOR** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or

8.4.6 **SURVEYOR** violates any rule, regulation or law by which **SURVEYOR** is bound or shall be bound while and in performing the services required under this AGREEMENT.

8.5 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

8.6 **Effect of Termination.** Notwithstanding Section 8.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **SURVEYOR** specifying the effective date of termination, notice of which shall be given in accordance with Article XVII, Notices.

- 8.6.1 Regardless of how this AGREEMENT is terminated, and subject to 8.6.2, **SURVEYOR** 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 specifications and reproducibles of all completed or partially completed work prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **SURVEYOR**, or provided to **SURVEYOR**, hereunder in accordance with Article VII, Ownership of Documents. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **SURVEYOR**'s sole cost and expense. Payment of compensation due or to become due to **SURVEYOR** is conditioned upon delivery of all such documents.
- 8.6.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **SURVEYOR** 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 **SURVEYOR** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **SURVEYOR** of any and all right or claims to collect moneys that **SURVEYOR** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.
- 8.6.3 Upon the effective date of expiration or termination of this AGREEMENT, **SURVEYOR** shall cease all operations of work being performed by **SURVEYOR** or any of its subcontractors pursuant to this AGREEMENT.
- 8.6.4 **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 **SURVEYOR** for any default hereunder or other action.

8.7 Right of **CITY** to Suspend Giving Rise to Right of **SURVEYOR** to Terminate.

8.7.1 **CITY** may suspend this AGREEMENT at the end of any phase for the convenience of **CITY** by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article XVII, Notices, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **SURVEYOR's** receipt of said notice.

8.7.2 **SURVEYOR** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **SURVEYOR** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article XVII, Notices, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

8.8 Procedures for **SURVEYOR** to follow upon Receipt of Notice of Suspension.

8.8.1 Upon receipt of written notice of suspension, **SURVEYOR** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.

8.8.2 **SURVEYOR** shall prepare a statement showing in detail the services performed under this agreement prior to the effective date of suspension.

8.8.3 All completed or partially completed work prepared under this agreement prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **SURVEYOR** until such time as **SURVEYOR** may exercise the right to terminate.

8.8.4 In the event that **SURVEYOR** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **SURVEYOR's** notice of termination, **SURVEYOR** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 8.8.4 shall prevent **SURVEYOR** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

8.8.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **SURVEYOR**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **SURVEYOR's** notice of termination.

8.8.6 Upon the above conditions being met, **CITY** shall pay **SURVEYOR** 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 previous payments of the fee.

8.8.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **SURVEYOR** acknowledges this duty on the part of **CITY**. To this end, **SURVEYOR** understands that failure of **SURVEYOR** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **SURVEYOR** of any portion of the fee for which **SURVEYOR** did not supply such necessary statements and/or documents.

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this AGREEMENT, **SURVEYOR** shall furnish an original completed Certificate of Insurance to **CITY's** Public Works Department and **CITY's** Risk Management Division, and shall be clearly labeled "ON - CALL SURVEYING SERVICES", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY's** Public Works Department and **CITY's** Risk Management Office, and no officer or employee shall have authority to waive this requirement.

9.2 **SURVEYOR's** financial integrity is of interest to **CITY**, therefore, subject to **SURVEYOR's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **SURVEYOR** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **SURVEYOR's** sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess

c. Products/completed operations d. Personal Injury e. Contractual liability	liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 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 negligent act, malpractice, error or omission in professional services.

9.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **SURVEYOR** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article IX herein within 10 days of the requested change.

9.4 **SURVEYOR** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds 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 the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

9.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by **CITY**, **SURVEYOR** shall notify **CITY** of such and shall give such notices not less than thirty (30) days prior to the change, if **SURVEYOR** knows of said change in advance, or ten (10) days notice after the change, if the **SURVEYOR** did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department - Capital Programs	Risk Management
P.O. Box 839966	506 Dolorosa
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

9.6 If **SURVEYOR** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **AGREEMENT**; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **SURVEYOR** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **SURVEYOR'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 **SURVEYOR** to stop work hereunder, and/or withhold any payment(s) which become due to **SURVEYOR** hereunder until **SURVEYOR** demonstrates compliance with the requirements hereof. A stop work order given to **SURVEYOR** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VIII, Section 8.7.

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

9.8 It is agreed that **SURVEYOR's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this **AGREEMENT**.

X. INDEMNIFICATION

10.1 SURVEYOR, whose work product is the subject of this AGREEMENT for surveying services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY SURVEYOR'S NEGLIGENT ACT, ERROR, OR OMISSION OF SURVEYOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, SURVEYOR OR SUBSURVEYOR OF SURVEYOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or 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 SURVEYOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF

COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

10.2 SURVEYOR shall advise CITY in writing within 24 hours of any claim or demand against CITY or SURVEYOR known to SURVEYOR related to or arising out of SURVEYOR's activities under this AGREEMENT.

10.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XI. SURVEYOR'S LIABILITY

11.1 Acceptance of the final plats and field notes by CITY shall not constitute nor be deemed a release of the responsibility and liability of SURVEYOR, its employees, associates, agents or subcontractors for the accuracy and competency of their documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the documents and work prepared by said SURVEYOR, its employees, subcontractors, and agents.

11.2 Standard of Care: Services provided by SURVEYOR under this AGREEMENT will 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.

XII. LICENSING

SURVEYOR shall utilize qualified personnel to complete the work to be performed under this AGREEMENT, and all work performed under this AGREEMENT is to be executed under the direct supervision of a registered professional land surveyor as required by state law. Persons retained to perform work pursuant to this AGREEMENT shall be the employees or subcontractors of SURVEYOR. SURVEYOR or its subcontractors shall perform all necessary work.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

13.1 SURVEYOR may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the written consent of CITY.

13.2 As a condition of consent, if same is given, SURVEYOR shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor SURVEYOR, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by CITY in accordance with this Article.

13.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **SURVEYOR** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VIII, Termination, and all rights, titles and interest of **SURVEYOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **SURVEYOR** shall in no event release **SURVEYOR** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **SURVEYOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

13.4 **SURVEYOR** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VIII, Termination.

XIV. INDEPENDENT CONTRACTOR

14.1 **SURVEYOR** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **SURVEYOR** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **SURVEYOR**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **SURVEYOR**.

14.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **SURVEYOR** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **SURVEYOR**.

XV. EQUAL EMPLOYMENT OPPORTUNITY

SURVEYOR shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **SURVEYOR** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XVI. SBEDA REQUIREMENTS

16.1 **SURVEYOR** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African-American ("AABE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

16.2 **SURVEYOR** agrees to implement the plan submitted in **SURVEYOR's** response to **CITY's** Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **SURVEYOR** agrees to be in full compliance with this article by meeting the percentages listed in **SURVEYOR's** Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **SURVEYOR** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **SURVEYOR's** Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **SURVEYOR** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **SURVEYOR's** Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

16.3 **SURVEYOR** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. **SURVEYOR** shall submit annual reports to **CITY's** Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/AABE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **SURVEYOR** is not in compliance with this article, **CITY** shall give notice of non-compliance to **SURVEYOR**. **SURVEYOR** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject **SURVEYOR** to any of the penalties listed in **CITY** of San

Antonio Ordinance No. 77758, at CITY's option. Further, such failure may be considered a default for which CITY may terminate this AGREEMENT in accordance with Article VIII, Termination.

16.4 **SURVEYOR** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

16.5 In all events, **SURVEYOR** shall comply with the CITY's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

16.6 It is CITY's understanding, and this AGREEMENT is made in reliance thereon, that **SURVEYOR**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to CITY's Request for Interest Statement.

16.7 Any work or services subcontracted by **SURVEYOR** shall be by written contract, and unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **SURVEYOR**.

16.8 CITY shall in no event be obligated to any third party, including any subcontractor of **SURVEYOR**, for performance or services or payment of fees.

XVII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, 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 on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

CITY of San Antonio
Public Works Department – Capital Programs
Attn: Bill Krause, Capital Programs Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for SURVEYOR, to:

Sunland Engineering Company
110 Broadway, Suite 70
San Antonio, Texas 78205
Attn: Javier Arguello, Vice-President

XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

18.1 **SURVEYOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

18.2 **SURVEYOR** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **SURVEYOR** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

XIX. SOLICITATION

SURVEYOR warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **SURVEYOR**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **SURVEYOR**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

XX. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

XXI. FAMILIARITY WITH LAW AND CONTRACT TERMS

SURVEYOR represents that, prior to signing this AGREEMENT, **SURVEYOR** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

XXII. APPLICABLE LAW

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIII. 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 Bexar County, Texas.

XXIV. SEVERABILITY

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

XV. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XVI. SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXVII. NON-WAIVER OF PERFORMANCE

27.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

27.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVIII. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXIX. LEGAL AUTHORITY

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

XXX. INCORPORATION OF ATTACHMENTS

SURVEYOR understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services and Work Authorization)

ATTACHMENT "B" (Fee Schedule)

ATTACHMENT "C" (Production Schedule)

In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail.

XXXI. ENTIRE AGREEMENT

31.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXX, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

31.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, _____.

CITY:

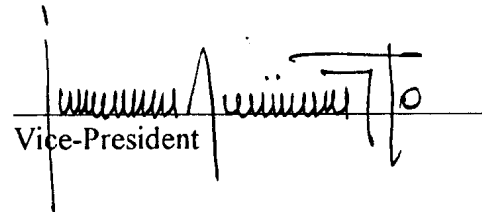
CITY OF SAN ANTONIO

SURVEYOR:

SUNLAND ENGINEERING COMPANY

CITY MANAGER

Vice-President



APPROVED AS TO FORM:

CITY ATTORNEY

Date

ATTACHMENT "A"

SCOPE OF SERVICES AND WORK AUTHORIZATION

A. The SURVEYOR shall furnish, as specific projects are identified, a survey of each parcel assigned and expressly warrants that each such document will be properly prepared and contain the signature of a Registered Professional Land Surveyor.

B. The SURVEYOR shall be responsible for performing all the assigned requirements to complete the work and shall also employ properly licensed individuals to perform the work where such credentials are required by law.

C. The SURVEYOR understands and accepts that this project agreement consists of an on-call status and will require maintaining a flexible schedule as parcels identified in specific projects become available on a long term schedule which is crucial to performing these services.

D. Seven sets of metes & bounds and drawings shall be submitted. All documents shall be on 8-1/2" X 11" paper when possible, drawings shall be at an appropriate size, and shall be delivered to the following address:

City of San Antonio
Park Project Services Division
Parks and Recreation Department
506 Dolorosa - Room 103
San Antonio, Texas 78283

E. Property owners shall be contacted and informed of the pending survey by the SURVEYOR. If absentee owners of the property are involved, the contact may be conducted via telephone, facsimile or by mail.

F. SURVEYOR will obtain from the property owner access permission for surveying for the subject property.

G. CITY will provide SURVEYOR with a copy of any conveyance documents, or surveying information necessary (unless otherwise authorized), of the schematics of the projects, maps, plats for the properties, field notes, environmental assessments, and any other available information to the greatest extent possible to enable the SURVEYOR to fulfill obligations under this Agreement. However, lack of information from the City shall not preclude the SURVEYOR from performing the services agreed herein.

H. The survey shall be prepared in accordance with the standards set forth in "Manual of Practice for Land Surveying in the State of Texas" and shall contain but not be limited to the following:

1. Each survey must be tied to the Texas State Plane Coordinate System using NAD83 or NAD83/93 HARN, Lambert Grid, Texas South Central Zone, unless otherwise instructed by the CITY.

2. Each survey must show at least one state plane coordinate value on the plat in US survey feet units.
3. Each survey must cite Lambert Grid - Texas South Central Zone NAD83 (or NAD83/93 HARN) as the bearing basis.
4. Each survey must show or recite COSA boundaries that have been established by CITY, where applicable.
5. All surface improvements and surface evidence of underground improvements on the tract to be taken as well as proposed improvements, if provided by City, must be located and shown on the plat, unless otherwise instructed by the CITY. Interior fences may not be required.
6. Each plat must include a legend, a graphic scale, and north arrow.
7. Where a boundary is established by a contour line, the datum shall be indicated and at least one benchmark shall be established on the ground and listed on the face of the survey. Where a flood plain boundary is used to establish a parcel boundary, the survey shall cite the source of the flood plain boundary location.
8. When a sale, lease, or easement tract boundary is to be surveyed to a contour line(s), please contact the CITY for specific instructions.

- a. All surveys will be required to conform to the CITY standards and require deliverables as outlined below:

Descriptions and plats must be submitted on 8-1/2" X 11" paper when possible. Before submitting final descriptions and plats, the surveyor shall fax or mail a preliminary set to the CITY at the following address:

**City of San Antonio, Public Works Department, Capital Programs Division,
Attn: William E. Krause**

Street Address:
114 W. Commerce
San Antonio, Texas 78205
Phone (210) 207-8140

Mailing Address:
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax (210) 207-6553

- b. The CITY shall give prompt notice to SURVEYOR whenever the CITY observes or becomes aware of any error, omission, or other defect in SURVEYOR'S services. However, neither CITY'S failure to notify SURVEYOR of errors, omissions, or defects in SURVEYOR'S services nor the acceptance of the work by the CITY

shall constitute or be deemed a release of the responsibility and liability of **SURVEYOR**, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by **CITY** for any defect in the surveys, reports, or other documents and work prepared by said **SURVEYOR**, its employees, subcontractors, and agents.

- c. After review and approval by **CITY**, the surveyor will submit digital files of the descriptions and plats with the final deliverables either on a 3.5" disk, cd-rom or via e-mail. Field notes should be submitted in ascii text format. AutoCAD drawings should be submitted in R14 format (R12 to R14 are acceptable formats). Seven (7) final signed and sealed originals must be provided by the surveyor after final approval by the **CITY**.

I. City shall be entitled at any time to review **SURVEYOR**'s files and back up materials for compensation described below, upon notice to **SURVEYOR**. **CITY** shall have forty-five (45) calendar days to review all submittals made by **SURVEYOR**.

J. After the basic Global Positioning Systems (GPS) control has been established, all surveys shall be completed and submitted within 30 days of the date of the written authorization to begin unless prior notification by **SURVEYOR**. Such notice from the **SURVEYOR** shall include the reason for the inability to meet the 30-day deadline and propose a reasonable alternative, subject to the reasonable agreement of the City. Surveys submitted after the 30 days or the arranged due date shall be subject to a 10% penalty that shall accrue bi-monthly. The 30-day period will not start until the surveyor has received all information required to be furnished to the surveyor by the City of San Antonio. Notwithstanding the preceding, **SURVEYOR** shall not be liable or responsible for, and there shall be excluded from the computation of the aforesaid period of time, 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 **SURVEYOR**'S reasonable control, provided that within thirty (30) days from the occurrence of any event for which time for performance by **SURVEYOR** shall be significantly extended under this provision, **SURVEYOR** shall have given written notice to the **CITY** setting forth the reason(s) for such extension and the actual or estimate time thereof.

ATTACHMENT B

FEE SCHEDULE

Future Council Approval will identify each specific project and consideration for the specific project.

ATTACHMENT C

PRODUCTION SCHEDULE

Future Council Approval will identify each specific project and the production schedule for the specific project.

Project: _____

Surveying Firm: _____

SECTION 1 (Not applicable to total time)

	<u>SCHEDULED</u>	<u>ACTUAL</u>
PRELIMINARY PHASE A: (Days to be Negotiated)		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

SECTION 2

PRELIMINARY PHASE B:

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

DESIGN PHASE

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
Total Contract Time:	_____ Days	_____ Days

BID PHASE & DOCUMENTS

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

BY: _____

Official Title

**PROFESSIONAL SERVICES AGREEMENT
FOR
SURVEYING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

**AGREEMENT FOR
ON – CALL SURVEYING SERVICES**

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as “CITY”), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved on the _____ day of _____, 2003 and _____ Bain Medina Bain, Inc., by and through its President, _____ Pamela Bain (hereinafter referred to as “SURVEYOR”), both of which may be referred to herein collectively as the “PARTIES”.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **SURVEYOR** do hereby agree as follows:

I. DEFINITIONS

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

1.1 “Director” means the director of CITY’s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 “Project” means the **ON – CALL SURVEYING SERVICES** Project of CITY for which SURVEYOR’s services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 “Ab Initio” means from the beginning; from the first act; from the inception. *See Black’s Law Dictionary, 5th Ed., © 1983.*

1.4 “Respondeat Superior” means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black’s Law Dictionary, 5th Ed., © 1983.*

1.5 The term “Parcel” as used herein means any continuous tract of land, or contiguous tracts, under the same ownership, whether or not such land is divided or subdivided for any other purposes. For example, continuous or contiguous tracts under the same ownership that are divided into multiple tax parcels, or that have been obtained by the ownership in multiple transactions, or the have been subdivided by the owner or owners will be deemed to be a single parcel for purposes this of this Agreement.

II. PERIOD OF SERVICE

This AGREEMENT shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services. Provided, however, the rates established in Attachment "B" shall be in effect for first two years of this contract only. Any work performed by SURVEYOR past this two year time shall be paid for at a fee established by mutual agreement of the parties.

III. SCOPE OF SERVICES

3.1 **SURVEYOR** shall not commence work until **SURVEYOR** has been thoroughly briefed on the scope of Project, and has been notified in writing by Director to proceed. Should the scope subsequently change, either party may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed for additional services in Article V, Compensation, and cannot substantially alter the original scope of this AGREEMENT.

3.2 **SURVEYOR**, in consideration for the compensation herein provided, shall render the professional services necessary for the Project.

3.3 **SURVEYOR** shall be represented by a registered professional land surveyor licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings and other meetings as may be required by the Project development process. All final submittals shall carry the signature and seal with the registered professional land surveyor's name and license number, with the date of the submittal adjacent thereto.

3.4 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **SURVEYOR** agrees to perform all work required by this Scope of Services.

3.4.1 ATTACHMENT "A" (Scope of Services and Work Authorization)

3.4.2 ATTACHMENT "B" – Fee Schedule

3.4.3 ATTACHMENT "C" – Production Schedule

IV. COORDINATION WITH THE CITY

4.1 SURVEYOR shall hold periodic conferences with Director, so that the project, as developed, shall have the full benefit of CITY's experience and knowledge of existing needs and facilities and be consistent with its current policies and standards. CITY shall make available, for SURVEYOR's use maps, field notes, and other data in its possession relative to this Project as may be requested by SURVEYOR at no cost to SURVEYOR.

4.2 Director shall act on behalf of CITY with respect to the work performed under this AGREEMENT. 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 SURVEYOR's services.

4.3 CITY shall provide written notice to the SURVEYOR of any errors or omissions discovered in the SURVEYOR's services, or performance, or of any development that affects the scope or timing of SURVEYOR's services.

V. COMPENSATION

5.1 For and in consideration of the services to be rendered by SURVEYOR, CITY shall pay SURVEYOR the fees set forth in ATTACHMENT "B."

5.2 Nothing contained in this AGREEMENT shall require CITY to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this AGREEMENT. CITY shall not be required to make any payments to SURVEYOR at any time SURVEYOR is in default under this AGREEMENT.

5.3 BASIS FOR COMPENSATION

A. The total fee for SURVEYOR's work [as defined in the Scope of Services] will be determined on a project by project basis as projects are identified and approved by future Council Action in reference to this agreement. The total fee shall not exceed the total amount of \$25,000.00 for any one specific project.

B. SURVEYOR may submit invoices for payment on a monthly basis for all completed surveys. SURVEYOR may be paid after the Director has approved the survey, errors and omissions will delay payment until corrections are completed and reviewed. SURVEYOR must submit a written progress report detailing work performed for the billing period reflected in the invoice.

5.4 MODIFICATIONS - SURVEYOR and CITY acknowledge the fact that the base fee as determined in section 5.3(A) above has been established predicated upon the total estimated costs of services to be rendered under the AGREEMENT. For additional services, compensation shall be subject to renegotiations in accordance with section 5.5 below.

5.5 COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

SURVEYOR may be required to perform the additional services listed in 5.5(B) below, subject to appropriations having been made therefore, in connection with this AGREEMENT. Should **SURVEYOR** be directed in writing by Director to perform these services, compensation shall be paid by **CITY** to **SURVEYOR** as authorized in writing by Director, as follows:

A. The basis for compensation for additional services may be in one or more of the following forms:

1. Rate for testimony of principals to be negotiated.
2. Non-Principal - Salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded.
3. Principal – hourly rate set forth in 5.5(D) herein with a stated maximum not to be exceeded.
4. Reimbursement of non-labor expenses and **CITY** directed subcontract expenses at invoice cost plus a 15% service charge.
5. Lump sum per item of work to be negotiated.
6. Lump sum to be negotiated.

B. Additional services include, but are not limited to the following:

1. Assistance to **CITY** as an expert witness in any litigation with third parties, arising from the Project.
2. Detailed measurements and surveys for exploration for utilities, if required.
3. Tree surveys.

C. Salary Cost - Salary cost is defined as the cost of salaries of draftsmen, stenographers, surveymen, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

(i) The amount of customary and statutory benefits of all personnel other than Principals of the Surveying Firm will be considered equal to _____% of salaries or wages.

D. Principals of the Surveying Firm - For the purpose of this provision, the Principals of the Surveying Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

Principal Name

Hourly Charge

5.6 MAXIMUM COMPENSATION FOR ADDITIONAL SERVICES – Total cumulative costs for the additional services listed in Section 5.5 or in Article VI below shall not exceed that amount appropriated by CITY as set forth in the ordinance authorizing this AGREEMENT, without prior authorization of the San Antonio City Council by passage of an ordinance therefore.

VI. REVISIONS TO DRAWINGS

SURVEYOR shall provide, at no expense to **CITY**, reasonable minor revisions to any survey, whether previously approved and accepted, as may be required to satisfy the scope of services established by this AGREEMENT.

VII. OWNERSHIP OF DOCUMENTS

7.1 **SURVEYOR** acknowledges and agrees that **CITY** shall own exclusively 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 shall be used as **CITY** desires and shall be delivered to **CITY** at no additional cost to **CITY** upon request or completion or termination of this AGREEMENT without restriction on future use.

7.2 **SURVEYOR** agrees and covenants to protect any and all proprietary rights of **CITY** in any materials provided to **SURVEYOR**. Such protection of proprietary rights by **SURVEYOR** 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 **SURVEYOR** by **CITY** shall not be released to any third party without the consent of **CITY** and shall be returned intact to **CITY** upon completion or termination of this AGREEMENT, upon the request of **CITY**.

7.3 **SURVEYOR** hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this AGREEMENT to **CITY**, including all moral 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 **SURVEYOR**. All reports, maps, project logos, drawings or other copyrightable work produced under this AGREEMENT shall become the property of **CITY** (excluding any instrument of services, unless otherwise specified herein). **SURVEYOR** shall, at its 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.

7.4 **SURVEYOR** may make copies of any and all documents and items for its files. **SURVEYOR** shall have no liability for changes made to or use of the drawings, specifications and other documents by other surveyors, or other persons, subsequent to the completion of the Project. **CITY** shall require that any such change or other use shall be appropriately marked to reflect what was changed or modified.

7.5 Copies of documents that may be relied upon by **CITY** are limited to the printed copies (also known as hard copies) that are sealed and signed by **SURVEYOR**. Files in electronic media

format of text, data, graphics, or other types that are furnished by **SURVEYOR** to **CITY** are only for convenience of **CITY**. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

VIII. TERMINATION AND/OR SUSPENSION OF WORK

8.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

8.2 Termination Without Cause.

8.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article XVII, Notices. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

8.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **SURVEYOR** written notice to proceed pursuant to Article III, Section 3.1, should Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article XVII, Notices and shall be effective upon delivery by **CITY** in accordance with Article XVII.

8.2.3 **CITY** shall equitably compensate **SURVEYOR** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **SURVEYOR** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

8.3 Defaults With Opportunity for Cure.

Should **SURVEYOR** fail to provide the required documents required by Article III, Scope of Services by the due dates established in Article III, Attachment C, Production Schedule in acceptable form, as indicated in said Scope of Services as approved by Director, same shall be considered a default. However, Parties agree that no default shall be considered to occur where **SURVEYOR's** failure to provide the documents is directly caused by the actions of **CITY**. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **SURVEYOR** shall have ten (10) days after receipt of the written notice, in accordance with Article XVII, Notices, to cure such default. If **SURVEYOR** fails to cure the default within such ten-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 contractor to complete the work required in this AGREEMENT. **CITY** shall also have the right to offset the cost of said new CONTRACT with a new contractor against **SURVEYOR'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.

8.4 **Termination For Cause.** Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

8.4.1 **SURVEYOR** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **SURVEYOR's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

8.4.2 **SURVEYOR** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT, except those events of default for which an opportunity to cure is provided herein; however, if such default as provided in Section 8.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:

(A) **SURVEYOR** fails to cure a default listed in Section 8.3 within the time period required for cure; or

(B) **SURVEYOR** is in default as provided in Section 8.3 on more than one occasion in any consecutive twelve (12) month period.

8.4.3 **SURVEYOR** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

8.4.4 **SURVEYOR** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **SURVEYOR's** assets or properties; or

8.4.5 **SURVEYOR** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or

8.4.6 **SURVEYOR** violates any rule, regulation or law by which **SURVEYOR** is bound or shall be bound while and in performing the services required under this AGREEMENT.

8.5 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

8.6 **Effect of Termination.** Notwithstanding Section 8.3, Defaults with Opportunity for Cure, upon a decision to terminate by CITY, written notice of such shall be immediately provided to SURVEYOR specifying the effective date of termination, notice of which shall be given in accordance with Article XVII, Notices.

- 8.6.1 Regardless of how this AGREEMENT is terminated, and subject to 8.6.2, SURVEYOR 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 specifications and reproducible of all completed or partially completed work prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by SURVEYOR, or provided to SURVEYOR, hereunder in accordance with Article VII, Ownership of Documents. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at SURVEYOR's sole cost and expense. Payment of compensation due or to become due to SURVEYOR is conditioned upon delivery of all such documents.
- 8.6.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, SURVEYOR 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 SURVEYOR to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by SURVEYOR of any and all right or claims to collect moneys that SURVEYOR may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.
- 8.6.3 Upon the effective date of expiration or termination of this AGREEMENT, SURVEYOR shall cease all operations of work being performed by SURVEYOR or any of its subcontractors pursuant to this AGREEMENT.
- 8.6.4 **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 SURVEYOR for any default hereunder or other action.

8.7 Right of **CITY** to Suspend Giving Rise to Right of **SURVEYOR** to Terminate.

8.7.1 **CITY** may suspend this AGREEMENT at the end of any phase for the convenience of **CITY** by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article XVII, Notices, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **SURVEYOR's** receipt of said notice.

8.7.2 **SURVEYOR** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **SURVEYOR** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article XVII, Notices, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

8.8 Procedures for **SURVEYOR** to follow upon Receipt of Notice of Suspension.

8.8.1 Upon receipt of written notice of suspension, **SURVEYOR** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.

8.8.2 **SURVEYOR** shall prepare a statement showing in detail the services performed under this agreement prior to the effective date of suspension.

8.8.3 All completed or partially completed work prepared under this agreement prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **SURVEYOR** until such time as **SURVEYOR** may exercise the right to terminate.

8.8.4 In the event that **SURVEYOR** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **SURVEYOR's** notice of termination, **SURVEYOR** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 8.8.4 shall prevent **SURVEYOR** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

8.8.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **SURVEYOR**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **SURVEYOR's** notice of termination.

8.8.6 Upon the above conditions being met, **CITY** shall pay **SURVEYOR** 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 previous payments of the fee.

8.8.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **SURVEYOR** acknowledges this duty on the part of **CITY**. To this end, **SURVEYOR** understands that failure of **SURVEYOR** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **SURVEYOR** of any portion of the fee for which **SURVEYOR** did not supply such necessary statements and/or documents.

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this AGREEMENT, **SURVEYOR** shall furnish an original completed Certificate of Insurance to **CITY's** Public Works Department and **CITY's** Risk Management Division, and shall be clearly labeled "ON - CALL SURVEYING SERVICES", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY's** Public Works Department and **CITY's** Risk Management Office, and no officer or employee shall have authority to waive this requirement.

9.2 **SURVEYOR's** financial integrity is of interest to **CITY**, therefore, subject to **SURVEYOR's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **SURVEYOR** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **SURVEYOR's** sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

TYPE

MINIMUM AMOUNTS

1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess

c. Products/completed operations d. Personal Injury e. Contractual liability	liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 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 negligent act, malpractice, error or omission in professional services.

9.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **SURVEYOR** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article IX herein within 10 days of the requested change.

9.4 **SURVEYOR** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds 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 the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

9.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by **CITY**, **SURVEYOR** shall notify **CITY** of such and shall give such notices not less than thirty (30) days prior to the change, if **SURVEYOR** knows of said change in advance, or ten (10) days notice after the change, if the **SURVEYOR** did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department - Capital Programs	Risk Management
P.O. Box 839966	506 Dolorosa
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

9.6 If **SURVEYOR** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **AGREEMENT**; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **SURVEYOR** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **SURVEYOR'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 **SURVEYOR** to stop work hereunder, and/or withhold any payment(s) which become due to **SURVEYOR** hereunder until **SURVEYOR** demonstrates compliance with the requirements hereof. A stop work order given to **SURVEYOR** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VIII, Section 8.7.

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

9.8 It is agreed that **SURVEYOR's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this **AGREEMENT**.

X. INDEMNIFICATION

10.1 SURVEYOR, whose work product is the subject of this AGREEMENT for surveying services, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY SURVEYOR'S NEGLIGENT ACT, ERROR, OR OMISSION OF SURVEYOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, SURVEYOR OR SUBSURVEYOR OF SURVEYOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or 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 SURVEYOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF

COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

10.2 SURVEYOR shall advise CITY in writing within 24 hours of any claim or demand against CITY or SURVEYOR known to SURVEYOR related to or arising out of SURVEYOR's activities under this AGREEMENT.

10.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XI. SURVEYOR'S LIABILITY

11.1 Acceptance of the final plats and field notes by CITY shall not constitute nor be deemed a release of the responsibility and liability of SURVEYOR, its employees, associates, agents or subcontractors for the accuracy and competency of their documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the documents and work prepared by said SURVEYOR, its employees, subcontractors, and agents.

11.2 Standard of Care: Services provided by SURVEYOR under this AGREEMENT will 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.

XII. LICENSING

SURVEYOR shall utilize qualified personnel to complete the work to be performed under this AGREEMENT, and all work performed under this AGREEMENT is to be executed under the direct supervision of a registered professional land surveyor as required by state law. Persons retained to perform work pursuant to this AGREEMENT shall be the employees or subcontractors of SURVEYOR. SURVEYOR or its subcontractors shall perform all necessary work.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

13.1 SURVEYOR may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the written consent of CITY.

13.2 As a condition of consent, if same is given, SURVEYOR shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor SURVEYOR, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by CITY in accordance with this Article.

13.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **SURVEYOR** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VIII, Termination, and all rights, titles and interest of **SURVEYOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **SURVEYOR** shall in no event release **SURVEYOR** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **SURVEYOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

13.4 **SURVEYOR** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VIII, Termination.

XIV. INDEPENDENT CONTRACTOR

14.1 **SURVEYOR** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **SURVEYOR** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **SURVEYOR**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **SURVEYOR**.

14.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **SURVEYOR** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **SURVEYOR**.

XV. EQUAL EMPLOYMENT OPPORTUNITY

SURVEYOR shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **SURVEYOR** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XVI. SBEDA REQUIREMENTS

16.1 **SURVEYOR** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African-American ("AABE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

16.2 **SURVEYOR** agrees to implement the plan submitted in **SURVEYOR**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **SURVEYOR** agrees to be in full compliance with this article by meeting the percentages listed in **SURVEYOR**'s Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **SURVEYOR** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the percentages submitted in **SURVEYOR**'s Interest Statement. Changes in contract value by changes in work orders, AGREEMENT amendments, or use of contract alternatives, which result in an increase in the value of the AGREEMENT by 10% or greater require the **SURVEYOR** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **SURVEYOR**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

16.3 **SURVEYOR** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. **SURVEYOR** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/AABE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **SURVEYOR** is not in compliance with this article, **CITY** shall give notice of non-compliance to **SURVEYOR**. **SURVEYOR** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject **SURVEYOR** to any of the penalties listed in **CITY** of San

Antonio Ordinance No. 77758, at CITY's option. Further, such failure may be considered a default for which CITY may terminate this AGREEMENT in accordance with Article VIII, Termination.

16.4 **SURVEYOR** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

16.5 In all events, **SURVEYOR** shall comply with the CITY's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

16.6 It is CITY's understanding, and this AGREEMENT is made in reliance thereon, that **SURVEYOR**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to CITY's Request for Interest Statement.

16.7 Any work or services subcontracted by **SURVEYOR** shall be by written contract, and unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **SURVEYOR**.

16.8 CITY shall in no event be obligated to any third party, including any subcontractor of **SURVEYOR**, for performance or services or payment of fees.

XVII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, 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 on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

CITY of San Antonio
Public Works Department – Capital Programs
Attn: Bill Krause, Capital Programs Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for SURVEYOR, to:

Bain Medina Bain, Inc.
1026 Central Parkway South
San Antonio, Texas 78232
Attn: Pamela Bain, President

XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

18.1 **SURVEYOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

18.2 **SURVEYOR** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **SURVEYOR** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

XIX. SOLICITATION

SURVEYOR warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **SURVEYOR**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **SURVEYOR**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

XX. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

XXI. FAMILIARITY WITH LAW AND CONTRACT TERMS

SURVEYOR represents that, prior to signing this AGREEMENT, **SURVEYOR** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

XXII. APPLICABLE LAW

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIII. 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 Bexar County, Texas.

XXIV. SEVERABILITY

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

XV. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XVI. SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXVII. NON-WAIVER OF PERFORMANCE

27.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

27.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVIII. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXIX. LEGAL AUTHORITY

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

XXX. INCORPORATION OF ATTACHMENTS

SURVEYOR understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services and Work Authorization)

ATTACHMENT "B" (Fee Schedule)

ATTACHMENT "C" (Production Schedule)

In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail.

XXXI. ENTIRE AGREEMENT

31.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXX, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

31.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, _____.


CITY:

CITY OF SAN ANTONIO

SURVEYOR:

BAIN MEDINA BAIN, INC.

CITY MANAGER



President

APPROVED AS TO FORM:

CITY ATTORNEY

Date

ATTACHMENT "A"

SCOPE OF SERVICES AND WORK AUTHORIZATION

A. The SURVEYOR shall furnish, as specific projects are identified, a survey of each parcel assigned and expressly warrants that each such document will be properly prepared and contain the signature of a Registered Professional Land Surveyor.

B. The SURVEYOR shall be responsible for performing all the assigned requirements to complete the work and shall also employ properly licensed individuals to perform the work where such credentials are required by law.

C. The SURVEYOR understands and accepts that this project agreement consists of an on-call status and will require maintaining a flexible schedule as parcels identified in specific projects become available on a long term schedule which is crucial to performing these services.

D. Seven sets of metes & bounds and drawings shall be submitted. All documents shall be on 8-1/2" X 11" paper when possible, drawings shall be at an appropriate size, and shall be delivered to the following address:

City of San Antonio
Park Project Services Division
Parks and Recreation Department
506 Dolorosa - Room 103
San Antonio, Texas 78283

E. Property owners shall be contacted and informed of the pending survey by the SURVEYOR. If absentee owners of the property are involved, the contact may be conducted via telephone, facsimile or by mail.

F. SURVEYOR will obtain from the property owner access permission for surveying for the subject property.

G. CITY will provide SURVEYOR with a copy of any conveyance documents, or surveying information necessary (unless otherwise authorized), of the schematics of the projects, maps, plats for the properties, field notes, environmental assessments, and any other available information to the greatest extent possible to enable the SURVEYOR to fulfill obligations under this Agreement. However, lack of information from the City shall not preclude the SURVEYOR from performing the services agreed herein.

H. The survey shall be prepared in accordance with the standards set forth in "Manual of Practice for Land Surveying in the State of Texas" and shall contain but not be limited to the following:

1. Each survey must be tied to the Texas State Plane Coordinate System using NAD83 or NAD83/93 HARN, Lambert Grid, Texas South Central Zone, unless otherwise instructed by the CITY.

2. Each survey must show at least one state plane coordinate value on the plat in US survey feet units.
3. Each survey must cite Lambert Grid - Texas South Central Zone NAD83 (or NAD83/93 HARN) as the bearing basis.
4. Each survey must show or recite COSA boundaries that have been established by CITY, where applicable.
5. All surface improvements and surface evidence of underground improvements on the tract to be taken as well as proposed improvements, if provided by City, must be located and shown on the plat, unless otherwise instructed by the CITY. Interior fences may not be required.
6. Each plat must include a legend, a graphic scale, and north arrow.
7. Where a boundary is established by a contour line, the datum shall be indicated and at least one benchmark shall be established on the ground and listed on the face of the survey. Where a flood plain boundary is used to establish a parcel boundary, the survey shall cite the source of the flood plain boundary location.
8. When a sale, lease, or easement tract boundary is to be surveyed to a contour line(s), please contact the CITY for specific instructions.
 - a. All surveys will be required to conform to the CITY standards and require deliverables as outlined below:

Descriptions and plats must be submitted on 8-1/2" X 11" paper when possible. Before submitting final descriptions and plats, the surveyor shall fax or mail a preliminary set to the CITY at the following address:

**City of San Antonio, Public Works Department, Capital Programs Division,
Attn: William E. Krause**

Street Address:
114 W. Commerce
San Antonio, Texas 78205
Phone (210) 207-8140

Mailing Address:
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax (210) 207-6553

- b. The CITY shall give prompt notice to SURVEYOR whenever the CITY observes or becomes aware of any error, omission, or other defect in SURVEYOR'S services. However, neither CITY'S failure to notify SURVEYOR of errors, omissions, or defects in SURVEYOR'S services nor the acceptance of the work by the CITY

shall constitute or be deemed a release of the responsibility and liability of **SURVEYOR**, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by **CITY** for any defect in the surveys, reports, or other documents and work prepared by said **SURVEYOR**, its employees, subcontractors, and agents.

- c. After review and approval by **CITY**, the surveyor will submit digital files of the descriptions and plats with the final deliverables either on a 3.5" disk, cd-rom or via e-mail. Field notes should be submitted in ascii text format. AutoCAD drawings should be submitted in R14 format (R12 to R14 are acceptable formats). Seven (7) final signed and sealed originals must be provided by the surveyor after final approval by the **CITY**.

I. City shall be entitled at any time to review **SURVEYOR**'s files and back up materials for compensation described below, upon notice to **SURVEYOR**. **CITY** shall have forty-five (45) calendar days to review all submittals made by **SURVEYOR**.

J. After the basic Global Positioning Systems (GPS) control has been established, all surveys shall be completed and submitted within 30 days of the date of the written authorization to begin unless prior notification by **SURVEYOR**. Such notice from the **SURVEYOR** shall include the reason for the inability to meet the 30-day deadline and propose a reasonable alternative, subject to the reasonable agreement of the City. Surveys submitted after the 30 days or the arranged due date shall be subject to a 10% penalty that shall accrue bi-monthly. The 30-day period will not start until the surveyor has received all information required to be furnished to the surveyor by the City of San Antonio. Notwithstanding the preceding, **SURVEYOR** shall not be liable or responsible for, and there shall be excluded from the computation of the aforesaid period of time, 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 **SURVEYOR**'S reasonable control, provided that within thirty (30) days from the occurrence of any event for which time for performance by **SURVEYOR** shall be significantly extended under this provision, **SURVEYOR** shall have given written notice to the **CITY** setting forth the reason(s) for such extension and the actual or estimate time thereof.

ATTACHMENT B

FEE SCHEDULE

Future Council Approval will identify each specific project and consideration for the specific project.

ATTACHMENT C

PRODUCTION SCHEDULE

Future Council Approval will identify each specific project and the production schedule for the specific project.

Project: _____

Surveying Firm: _____

SECTION 1 (Not applicable to total time)

	<u>SCHEDULED</u>	<u>ACTUAL</u>
PRELIMINARY PHASE A: (Days to be Negotiated)		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

SECTION 2

PRELIMINARY PHASE B:

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

DESIGN PHASE

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
Total Contract Time:	_____ Days	_____ Days

BID PHASE & DOCUMENTS

Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	_____ Days
City Review & Approval:	_____ Days	_____ Days

BY: _____

Official Title