City of Terrell Hills
5100 N. New Braunfels
Terrell Hills, Texas 78209

STANDARD FORM OF AGREEMENT
MASTER PROFESSIONAL SERVICES

XXXXXX
PROJECT

CONTRACT # 23-XXXX

MASTER PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. _____

This Contract is between the **City of Terrell Hills**, a Texas home-rule municipal corporation, (the "City") and _____, a _____ (the "Consultant"), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

City and Consultant are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

The Parties hereby agree as follows:

ARTICLE 1
SCOPE OF SERVICES

1.1 Consultant agrees to perform professional services (the "Services") related to _____ as are requested from time to time by City, which Services shall be set forth more particularly in Work Orders, the form of which is attached hereto as **Attachment B**, issued from time to time by City and accepted by Consultant. Each Work Order shall constitute a separate and independent agreement between Consultant and City.

1.2 Work Orders shall contain the schedule, price, and payment terms applicable to the Services within the scope of such orders. Time is of the essence to this Agreement and all Work Orders. Work Orders shall become effective when an acknowledged copy thereof is signed by a duly authorized officer of Consultant, returned to City and countersigned by City. The specific terms of a Work Order may not be modified unless such modifications are agreed to in writing by City and Consultant.

1.3 All Work Orders incorporate and shall be governed by and subject to the terms, conditions, and other provisions of this Agreement; provided, however, that a Work Order may specifically state a term, condition, or other provision of this Agreement that is being modified thereby. Unless so stated, the terms, conditions, or other provisions contained in any Work Order or any proposal attached to or incorporated into a Work Order that conflict with any terms, conditions, or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Work Orders, and the balance of the terms, conditions, and other provisions contained in such Work Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Work Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Work Order.

1.4 Nothing herein shall obligate City to issue, or Consultant to accept, any Work Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties, or either of

them, from entering into agreements other than this Agreement for professional services or other work.

1.5 Consultant agrees to execute any and all certificates and/or documents as may reasonably be required by City, provided same is not in conflict with this Contract, unless excepted by Consultant in writing.

1.6 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant's Services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Contract. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement. Consultant shall designate a full time employee contact for each Work Order to act as the project manager (the "Consultant Project Manager") issued by and under this Contract for consultation throughout the Work Order. Any replacement of that Consultant Project Manager shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

1.7 Consultant shall be responsible for the coordination of its Services with those of its Subconsultant, the City, and the City's Consultants. Consultant shall be responsible for the completeness and accuracy of all Work Product submitted by or through Consultant and for its compliance with all applicable local, state and federal rules, regulations, ordinances and codes, life safety codes, building codes, zoning codes, and accessibility requirements and codes, including, but not limited to the provisions of the Americans with Disabilities Act, the *Texas Accessibility Standards of the Architectural Barriers Act* located at Chapter 469 of the Texas Government Code, the Federal Fair Housing Amendment Act, and all other regulatory requirements, laws, standards, codes and statutes related to the Services. Upon receipt from the City, the Consultant shall review any services or information furnished by the City and the City's Consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

ARTICLE 2
TERM OF AGREEMENT

2.1 This Agreement shall be effective from the date first set forth above and shall continue without action by either Party for a term of three (3) years from the date first set forth above or through completion of the Work for all approved Work Order(s) unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing Paragraph 2.1, this Agreement shall apply to and remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as Consultant's obligations in connection with the Services under such Work Orders have been completed and fulfilled; provided however, that, pursuant to Article 12, either Party shall have

the right to terminate any Work Order for cause and City shall have the right to terminate any Work Order for convenience.

2.3 Without limiting the generality of the foregoing Paragraph 2.2, Consultant's obligations under Articles 5, 6, 8, 9, 10, 11, 18, 19 and 20 shall survive the expiration of termination of this Agreement or any Work Order.

ARTICLE 3
COMPENSATION AND PAYMENT

3.1 City agrees to pay Consultant, and Consultant agrees to accept, as full and complete compensation for Services properly performed by Consultant in accordance with this Agreement and applicable Work Order, the rates and charges agreed upon for a specific Work Order. Paragraphs A.1 or A.2 of **Attachment A**, which is attached hereto and incorporated herein by reference, shall be used to negotiate the compensation payable for each Work Order issued hereunder.

3.2 On or before the tenth day of each calendar month, Consultant shall submit an invoice to City, together with backup documentation required by City and releases and waivers in forms acceptable to City, covering all Services performed under any Work Order by Consultant and its subconsultants, subcontractors and suppliers during the preceding calendar month. Consultant shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount budgeted for each such Work Order, (iii) the amount of payment requested pursuant to each such Work Order, (iv) the amount previously paid pursuant to each such Work Order, (v) descriptions of Services performed during the prior month pursuant to each such Work Order, and (vi) the total payment requested by such invoice. City shall pay the amount it agrees to be due within thirty (30) days after receipt of such complete invoice and backup documentation.

3.3 City shall have the right but not the obligation to withhold all or any part of payment requested in any invoice to protect City from loss or expected loss because of:

(a) services that are not in compliance with this Agreement or the applicable Work Order or any failure of Consultant to perform Services in accordance with the provisions of this Agreement or the applicable Work Order;

(b) third party suits, stop notices, claims or liens arising out of Services performed for which Consultant is responsible pursuant to this Agreement and asserted or filed against City or any of its property or portion thereof or improvements thereon provided that Consultant fails to provide City with sufficient evidence that Consultant's insurance is adequate or shall cover the claim(s);

(c) uninsured damage to any Indemnitee (hereinafter defined) which results from Consultant's failure to obtain or maintain the insurance required by this Agreement or from any action or inaction by Consultant or any of its subcontractors, subconsultants, or

suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or

(d) any failure of Consultant to pay any subcontractor, subconsultant, or supplier of Consultant the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. Consultant will not include in its billings to City any amount in a subcontractor or supplier invoice which it has not paid or does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

Any failure by City to exercise its right to withhold all or any part of payment requested in any invoice as provided in this Paragraph 3.3 shall not be and shall not be construed as (i) a waiver of City's right to do so in the future, or (ii) evidence that any of the circumstances identified in Subparagraphs 3.3(a) through (d) above have not occurred.

3.4 Consultant agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty (30) days following payment from City, all subcontractors, subconsultants, and any other persons or entities supplying labor, supplies, materials, or equipment in connection with Services that are owed payment by Consultant out of such payment made to Consultant by City. Provided that City is not in breach of its payment obligations hereunder, Consultant shall ensure that the Project site remains free from all liens and claims by its consultants. If City receives notice of a lien claim, or a claim for non-payment, from any of Subconsultants, City may, in its sole discretion, directly pay any such Subconsultant. If City pays the Subconsultant, the amount paid for the claim and any expenses, including reasonable attorneys' fees, incurred by City shall be deducted from Consultant's next payment. Further, provided that City has paid Consultant in accordance with the terms of this Agreement and any particular Work Order, CONSULTANT SHALL DEFEND AND INDEMNIFY CITY FROM AND AGAINST ANY CLAIMS FOR PAYMENT ASSERTED OR FILED BY ANY SUCH PERSON OR ENTITY AGAINST CITY, ITS PROJECT OR PROPERTY OR CONSULTANT.

ARTICLE 4
STANDARD OF CARE; COORDINATION OF SERVICES; SAFETY; COST ESTIMATES; LEGAL COMPLIANCE; THIRD PARTY REVIEW

4.1 Consultant shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Work Order: (a) with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineers (collectively, the Consultant's "Standard of Care").

4.2 Consistent with its Standard of Care, Consultant shall (a) perform its Services in accordance with all applicable laws, codes, ordinances and regulations; (b) perform its Services in an efficient manner; and (c) keep City apprised of the status of Services, coordinate its activities

with City, and accommodate other activities of City at sites that Services impact. Consultant shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

4.3 Consultant shall be responsible for its own activities at sites including the safety of its employees, and that of its subconsultants, subcontractors and suppliers but shall not assume control of or responsibility for the site. The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while performing Services It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons. Provided however, that to the extent such Work Order or Services are to be performed for or on an active construction project, construction contractors of City shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all persons, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with City. Without assuming any control over, responsibility for or liability whatsoever with respect to the construction contractor obligations of the foregoing sentence, Consultant shall notify City if it observes violations of safety regulations or ordinances or quality of work deficiencies by City's construction contractors. Consultant shall comply with the site safety program and rules established by the construction contractors.

4.4 To the extent that Consultant provides to City any estimate of costs associated with construction, any such estimate shall be developed in accordance with Consultant's Standard of Care, but it is recognized by the Parties that neither Consultant nor City has control over the cost of the labor, materials, or equipment, over a construction contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from City's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by Consultant.

4.5 Consultant hereby agrees that the following terms, conditions, verifications, certifications, and representations apply to and are incorporated into this Agreement for all purposes:

(a) With respect to providing Services hereunder, Consultant shall comply with any applicable Equal Employment Opportunity and/or Affirmative Action ordinances, rules, or regulations during the term of this Agreement.

(b) Pursuant to Texas Local Government Code Chapter 176, Consultant shall submit a signed Texas Ethics Commission ("TEC") Conflict of Interest Questionnaire ("CIQ") at the time Consultant submits this signed Agreement to City. TEC Form CIQ and information related to same may be obtained from TEC website by visiting

https://www.ethics.state.tx.us/forms/conflict/. If Consultant certifies that there are no Conflicts of Interest, Consultant shall indicate so by writing name of Consultant's firm and "No Conflicts" on the TEC Form CIQ.

(c) If Consultant is a privately held entity, then pursuant to Texas Government Code Section 2252.908 and the rules promulgated thereunder by the TEC, Consultant shall submit a completed and signed TEC Form 1295 with a certificate number assigned by the TEC to City at the time Consultant submits this signed Agreement to City. TEC Form 1295 and information related to same may be obtained from TEC website by visiting https://www.ethics.state.tx.us/filinginfo/1295/. Consultant agrees and acknowledges that this Agreement shall be of no force and effect unless and until Consultant has submitted said form to City, if and to the extent such form is required under Government Code § 2252.908 and the rules promulgated thereunder by the TEC.

(d) As required by Chapter 2271, Texas Government Code, Consultant hereby verifies that Consultant, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott Israel and will not boycott Israel through the term of this Agreement. The term "boycott Israel" in this paragraph has the meaning assigned to such term in Section 808.001 of the Texas Government Code, as amended.

(e) Pursuant to Chapter 2252, Texas Government Code, Consultant represents and certifies that, at the time of execution of this Agreement, neither Consultant, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, is engaged in business with Iran, Sudan, or any terrorist organization, and is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

(f) As required by Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, Consultant hereby verifies that Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott energy companies, and will not boycott energy companies during the term of this Agreement. The term "boycott energy companies" in this paragraph shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code, as amended.

(g) As required by Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), as amended, Consultant hereby verifies that Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, (i) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (ii) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The term "discriminate against a firearm

entity or trade association" in this paragraph shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19), as amended.

(h) Pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 2116, 87th Legislature, Regular Session), as amended, and to the extent this Agreement grants to Consultant direct or remote access to the control of critical infrastructure, excluding access specifically allowed for product warranty and support, Consultant verifies that neither Consultant, including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same, nor any of its sub-contractors are: (i) owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (ii) headquartered in China, Iran, North Korea, Russia or a designated country. The term "designated country" in this paragraph means a country designated by the Governor as a threat to critical infrastructure under Section 2274.0103, Texas Government Code. The term "critical infrastructure" in this paragraph shall have the meaning assigned to such term in Section 2274.0101, Texas Government Code.

4.6 Consultant acknowledges and agrees that projects of City may be subject to review and approval by other third parties. Accordingly, as and when requested by City, Consultant shall submit such information and cooperate with the other third parties to the extent necessary to undergo any such review or obtain any such approval.

4.7 Consultant does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If City reuses any Work Product without Consultant's specific written verification or adaptation, such reuse will be at the risk of City, without liability to Consultant.

4.8 Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

4.9 Conflicts of Interest Prohibited. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement or any Work Order. If Consultant maintains or acquires a conflicting interest, any contract or Work Order with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City. The Consultant shall take appropriate steps to ensure that neither the Consultant nor any Staff is placed in a position where, in the reasonable opinion of the City, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the City under the provisions of the Contract. The Consultant will disclose to the Authority full

particulars of any such conflict of interest which may arise. By means of example only, and not limitation, it shall be a potential conflict of interest if Consultant provides plan review services on any land development, where Consultant has been involved in the preparation of the current or prior plan proposed to be developed in the City to ensure that such conform to codes adopted by the City; or has been involved in the preparation of a plan adjacent or abutting a development for which the City has requested Plan Review Services.

4.9.1 Notice of Potential Conflict. Consultant shall notify City in writing prior to accepting any Work Order, or beginning Services on any assignment or task under a Work Order for which Consultant believes there is or may be an actual or potential conflict of interest due to Engineer's professional services to third parties. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the City in writing of such conflict. The Consultant shall not receive any compensation, and Consultant waives the same, in connection with any work, Services or other activities of the Consultant for Service provided where a conflict of interest exists, unless notice is provided as required herein. As used herein a conflict of interest

4.9.2 Termination for Material Conflict. If, in the reasonable judgment of the City, such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the City may terminate the Agreement immediately upon written notice to Consultant; such termination of the Agreement or any Worker shall be effective upon the receipt of such notice by Consultant.

ARTICLE 5
COST RECORDS

5.1 Consultant shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by Consultant under cost reimbursable, time and material or unit price Work Orders, during the period of this Agreement and for five (5) years thereafter, Consultant shall maintain records of direct costs for which City is charged. City shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. City's audit rights for fixed unit rate or time and materials Work Orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third party charges only. Except to the extent audit rights are granted to City by applicable law, City shall have no audit rights with respect to the portion of Work Orders or Services compensated on a lump sum basis.

ARTICLE 6
OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All studies, plans, deliverables, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by Consultant, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of City are and shall remain City's property upon creation (collectively, "Work Product"); provided, however, that Work Product shall not include pre-existing proprietary information of Consultant, its

subconsultants, subcontractors, and/or suppliers ("Consultant Proprietary Information"). To this end, Consultant agrees to and does hereby assign, grant, transfer, and convey to City, its successors and assigns, Consultant's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. Consultant confirms that City and its successors and assigns shall own Consultant's right, title and interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, Consultant hereby grants City a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties Consultant Proprietary Information in connection with City's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of City or otherwise in connection with property or projects in which City has an interest (whether by City or a third party). Consultant shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all of its subconsultants, subcontractors, and suppliers. Work Product is to be used by Consultant only with respect to the Project in connection with which such Work Product was created and is not to be used on any other project. Consultant and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of City's copyright or other reserved rights. Consultant agrees that all Work Product will be maintained according to the provisions of the Public Information Act, Chapter 552, Texas Government Code, and the Local Government Records Act, Chapters 201 through 205, Texas Local Government Code, each as amended. Consultant shall deliver all copies of the Work Product to City upon the earliest to occur of City's request, completion of Services in connection with which Work Product was created, or termination of this Agreement. Consultant is entitled to retain copies of Work Product for its permanent Project records.

6.2 Consultant agrees that all information provided by City in connection with Services shall be considered and kept confidential ("Confidential Information"), and shall not be reproduced, transmitted, used, or disclosed by Consultant without the prior written consent of City, except as may be necessary for Consultant to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

(a) was at the time of receipt by Consultant otherwise known by Consultant by proper means;

(b) has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to Consultant;

(c) subsequently is developed independently by Consultant, by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of Consultant's being a Party to this Agreement;

(d) becomes known or available to Consultant from a source other than City and without breach of this Agreement by Consultant or any other impropriety of Consultant;

(e) enters the public domain without breach of the Agreement by or other impropriety of Consultant;

(f) becomes available to Consultant by inspection or analysis of products available in the market;

(g) is disclosed with the prior written approval of City;

(h) was exchanged between City and Consultant and ten (10) years have subsequently elapsed since such exchange; or

(i) is disclosed to comply with the Texas Open Records Act or in response to a court order to comply with the requirement of a government agency.

6.3 Consultant shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as Consultant normally takes to preserve and safeguard its own proprietary or confidential information.

6.4 Consultant will advise City of any patents or proprietary rights and any royalties, licenses, or other charges which Consultant knows or should know in the exercise of its Standard of Care impacts any design provided by Consultant in connection with any Services, and obtain City's prior written approval before proceeding with such Services. Consultant shall not perform patent searches or evaluation of claims, but will assist City in this regard if requested, pursuant to a written change order in accordance with Paragraph 12.1, below. There will be no charge for Consultant's existing patents.

ARTICLE 7
INDEPENDENT CONTRACTOR RELATIONSHIP

7.1 In the performance of Services hereunder, Consultant shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. Consultant shall not be considered a partner, affiliate, agent, or employee of City and shall in no way have any authority to bind City to any obligation.

ARTICLE 8
WARRANTY PERIOD; GUARANTEES

8.1 If within a period of one (1) year following completion of Services under a Work Order, it is discovered that such Services were not performed in accordance with Consultant's Standard of Care, City, in its sole discretion, may: (1) direct Consultant to re-perform and Consultant shall re-perform such Services at its own expense, and as expediently or in the manner required for City's needs; or (2) retain such other consultant or consultants as necessary to perform such corrective services, and Consultant agrees to pay City's costs associated with having such other consultant or consultants perform such corrective services, and any other damages incurred by City as a result of such default. The obligations of Consultant under this Paragraph 8.1 are in addition to other rights and remedies of City available to it pursuant to this Agreement or applicable law.

8.2 Consultant agrees to assign City the warranty or guarantee of any subconsultant, subcontractor, supplier or manufacturer of items of services, supplies, machinery, equipment, materials, or products provided by Consultant hereunder and cooperate and assist City in City's enforcement thereof. Consultant's responsibility with respect thereto is limited to such assignment, cooperation, and assistance. The representations and warranties of Consultant under this Agreement and Work Orders are made in lieu of any other warranties or guarantees and Consultant makes no other warranties whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, and Consultant shall have no liability to City based upon any theory of liability that any such other warranty was made or breached.

ARTICLE 9
INDEMNIFICATION

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS CITY AND EACH OF ITS COUNCIL MEMBERS, OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "CITY INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS INCURRED BY INDEMNITEES THAT ARISE FROM OR RELATE TO PERFORMANCE OF THE SERVICES OR THIS CONTRACT TO THE EXTENT:

(1) DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS CONTRACT, BY CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT WITH CONSULTANT OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;

(2) CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF CONSULTANT'S STANDARD OF CARE, BY CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT WITH CONSULTANT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;

(3) CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING ACTUAL OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL;

(4) DUE TO THE FAILURE OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT WITH CONSULTANT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL TO PAY ITS CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR

(5) OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS CONTRACT, INCLUDING SUCH CLAIMS, DAMAGES, LIABILITIES, LOSSES, COSTS, OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONSULTANT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL.

NOTHING CONTAINED IN THIS SECTION 9.1 SHOULD BE CONSTRUED TO REQUIRE CONSULTANT TO INDEMNIFY OR HOLD HARMLESS CITY OR ANY INDEMNITEES FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CITY OR INDEMNITEES (*TEX. GOV'T. CODE § 2254.0031*). NOTHING IN THIS ARTICLE 9 IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW.

9.2 TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO THE EXTENT A DEFENSE IS NOT PROVIDED FOR THE INDEMNITEES UNDER AN INSURANCE POLICY AS REQUIRED UNDER SECTION 11.1(f) HEREOF OR THE INDEMNITEES' ATTORNEYS' FEES ARE NOT OTHERWISE RECOVERED UNDER THE INDEMNITY PROVISION SET FORTH IN SECTION 9.1 HEREOF, CONSULTANT SHALL, UPON FINAL ADJUDICATION OF THE LOSSES AS DEFINED IN SECTION 9.1 HEREOF AND WITHIN THIRTY (30) DAYS FOLLOWING THE DATE OF A WRITTEN DEMAND, REIMBURSE THE INDEMNITEES FOR ALL REASONABLE ATTORNEYS' FEES INCURRED TO DEFEND AGAINST THE LOSSES IN PROPORTION TO CONSULTANT'S LIABILITY TO ANY THIRD PARTY FOR SUCH LOSSES.

9.3 Consultant shall procure liability insurance covering its obligations under this section.

9.4 It is mutually understood and agreed that the indemnification provided for in this section 9 shall indefinitely survive any expiration, completion or termination of this Contract. There shall be no additional indemnification other than as set forth in this section. All other provisions

regarding the same subject matter shall be declared void and of no effect.

9.5 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Section 9.1, and any Additional Insured requirements under Article 11, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE 10
LIMITATION OF LIABILITY

10.1 NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF USE OR ANY OTHER INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES (EXCLUDING FINES AND PENALTIES LEVIED BY A REGULATORY AGENCY), EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF A PARTY, WHETHER ACTIVE OR PASSIVE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

10.2 THE PARTIES AGREE THAT NEITHER PARTY'S INDIVIDUAL EMPLOYEES, OFFICERS, ELECTED OFFICIALS, DIRECTORS OR PRINCIPALS SHALL BE SUBJECT TO ANY PERSONAL LIABILITY AS A RESULT OF OR IN CONNECTION WITH THE CONTRACT OR ANY WORK ORDER FOR SERVICES HEREUNDER, EXCEPT AS REQUIRED UNDER THE TEXAS OCCUPATIONS CODE § 1051. IN CASES INVOLVING THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CITY'S, OR CONSULTANT'S EMPLOYEES, OFFICERS, DIRECTORS OR PRINCIPALS, THE FOREGOING LIMITATION SHALL NOT APPLY AND THE OTHER PARTY SHALL BE ENTITLED TO ALL AVAILABLE REMEDIES AT LAW OR IN EQUITY.

ARTICLE 11
INSURANCE

11.1 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth on below**.**

Each Subconsultant must provide Worker's Compensation/Employer's liability, Professional Liability, CGL, and Automobile Liability coverage with equal limits as Consultant; provided, however, the limits of such insurance may be adjusted in accordance with the nature of each Subconsultant's operations but, if such adjustment is requested, it must be submitted to City for approval before the Consultant enters into an agreement or any work commences under the agreement in question.

During the term of the Contract Consultant's insurance policies shall meet the minimum requirements of this section:

11.2 Types. Consultant shall have the following types of insurance:

11.2.1 Commercial General Liability.

11.2.2 Business Automobile Liability.

11.2.3 Workers Compensation /Employer's Liability

11.2.4 Professional Liability.

11.3 Certificates of Insurance. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees and volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as Exhibit "C", and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

11.4 General Requirements Applicable to All Policies. The following General Requirements to all policies shall apply:

11.4.1 Only licensed insurance carriers authorized to do business in the State of Texas will be accepted.

11.4.2 Deductibles shall be listed on the Certificate of Insurance.

11.4.3 "Claims made" policies will not be accepted, except for Professional Liability insurance.

11.4.4 Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days prior written notice has been given to the City of Terrell Hills.

11.4.5 The Certificates of Insurance shall be prepared and executed by the insurance carrier or its authorized agent on the most current State of Texas Department of Insurance-approved forms.

11.4.6 Additional Insured Status. To the fullest extent permitted under Texas law City, and Indemnitees, shall be included as additional insureds on each CGL policy procured by Consultants and Subconsultants using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations) or endorsements providing equivalent coverage. Such parties shall also be included as additional insureds on all other policies procured by Consultant and Subconsultants except Worker's Compensation/Employer's Liability and Professional Liability with endorsements approved by City. Notwithstanding anything to the contrary, such additional insured coverage shall

not exceed that allowed under Texas law.

11.5 Commercial General Liability Requirements. The following Commercial General Liability requirements shall apply:

11.5.1 Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.

11.5.2 Minimum Limit of $1,000,000 per occurrence for bodily injury and property damage with a $2,000,000 annual aggregate.

11.5.3 No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.

11.5.4 The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.

11.5.5 The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.6 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

(a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current. A. M. Best Key Rating Guide.

(b) Minimum Combined Single Limit of $1,000,000 per occurrence for bodily injury and property damage.

(c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.

(d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.

(e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.7 Workers' Compensation/Employers Liability Insurance Requirements. The following Workers' Compensation Insurance requirements shall apply; and the term "contractor" shall be construed to mean "Consultant' as identified in this Contract:

11.7.1 Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy; either directly through their employer's policy (the Consultant's, or subcontractor's policy) or through an executed coverage agreement on an

approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Consultants and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

11.7.2 The workers' compensation/employer's liability insurance shall include the following terms:

11.7.2.1 Employer's Liability limits of $1,000,000 for each accident is required.

11.7.2.2 "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.

11.7.2.3 Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

11.7.3 Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Contract, the bid specifications, this Contract, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

11.7.3.1 Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the Project.

Duration of the Project - includes the time from the beginning of the work on the Project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project.

"Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

11.7.3.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

11.7.3.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

11.7.3.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

11.7.3.5 The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

11.7.3.5.1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

11.7.3.5.2 no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

11.7.3.6 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

11.7.3.7 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

11.7.3.8 The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage

and report lack of coverage.

11.7.3.9 The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

11.7.3.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

11.7.3.9.2 provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

11.7.3.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

11.7.3.9.4 obtain from each other person with whom it contracts, and provide to the Contractor:

11.7.3.9.4.1 a certificate of coverage, prior to the other person beginning work on the project; and

11.7.3.9.4.2 a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

11.7.3.9.5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

11.7.3.9.6 notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

11.7.3.9.7 Contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

11.7.3.9.8 By signing this Contract, or providing, or causing to be

provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11.7.3.9.9 The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor that entitles the governmental entity to declare the Contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

11.8 Professional Liability Requirements. The following Professional Liability requirements shall apply:

(a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.

(b) Minimum of $1,000,000 per claim and $2,000,000 aggregate, with a maximum deductible of $100,000.00. Financial statements shall be furnished to the City of Terrell Hills when requested.

(c) Professional liability coverage will be obtained and maintained by Consultant and Subconsultant with policy limits set forth above to insure from and against all negligent acts, errors, and omissions in the professional services performed by them, and their agents, representatives, employees, and Subconsultants. Coverage shall provide full prior acts coverage or a retroactive date not later than the date the services are first performed in connection with the Project. Policies shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or Subconsultants; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; or (vi) design services. All policies shall be maintained until all claims arising out of the services provided by each entity are barred by the statute of repose under Texas law. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an

extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.

(d) Retroactive date must be shown on certificate.

ARTICLE 12
CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE

12.1 City may, at any time and from time to time, make written changes to Work Orders in the form of modifications, additions, or omissions. In the event that any such change, through no fault of Consultant, shall impact Consultant's compensation or schedule, then (a) such changes shall be authorized by written change order issued by City and accepted by Consultant, and (b) an equitable adjustment shall be made to the Work Order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

12.2 City may for convenience terminate this Agreement, any Work Order issued under this Agreement, or Consultant's right to perform Services under this Agreement or any Work Order by at any time giving seven (7) days written notice of such termination. In such event, City shall have the right but not the obligation to assume all obligations and commitments that Consultant may have in good faith undertaken or incurred in connection with the Services terminated, and City shall pay Consultant, as its sole and exclusive remedy, for Services properly performed to date of termination and for reasonable costs of closing out such Services provided City has pre-approved such costs. Consultant shall not be entitled to lost profit on unperformed Services or any consequential damages of any kind. Upon termination, Consultant shall invoice City for all services performed by Consultant prior to the time of termination which have not previously been compensated. Payment of undisputed amounts in the final invoice shall be due and payable within thirty (30) days after receipt by City and City's receipt of all Work Product.

12.3 This Agreement or any Work Order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that City terminates this Agreement or any Work Order for cause, Consultant shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to City's right to offset and/or recoup all damages and costs associated with finally completing such Services. If for any reason, Consultant is declared in default and/or terminated by City under any Work Order with City, City shall have the right to offset and apply any amounts which might be owed to City by Consultant against any earned but unpaid amounts owed to Consultant by City under any Work Order. In the event any Work Order is terminated by City, Consultant shall promptly deliver to City all Work Product with respect to such terminated Work Order.

12.4 The City may, without cause, order the Consultant in writing to suspend, delay, or interrupt this Agreement or any Work Order in whole or in part for such period of time as the City may determine. Upon receipt of such notice, the Consultant shall, unless the notice requires otherwise, immediately discontinue Services on the date and to the extent specified in the notice.

The Consultant shall be compensated for Services performed prior to notice of such suspension. When the services under this Contract are resumed, the Consultant shall be compensated for expenses directly and necessarily incurred in the interruption and resumption of the Consultant's services, without markup.

12.5 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the Parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City:	**Consultant:**
(b) City of Terrell Hills	
Attn: William Foley, City Secretary/Manager	**Attn:**
5100 N. New Braunfels	**(address)**
Terrell Hills, Texas 78209	**(city, state, zip)**

ARTICLE 13
FORCE MAJEURE

13.1 Any delay in performance or non-performance of any obligation other than an obligation to make a payment as required under this Agreement or any Work Order, of Consultant contained herein shall be excused to the extent such delay in performance or non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, pandemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communication systems, sabotage, terrorism, or judicial restraint, but only to the extent that such event (i) is beyond the reasonable control of and cannot be reasonably anticipated by or the effects cannot be reasonably alleviated by Consultant and (ii) prevents the performance of Services.

13.2 If Consultant is affected by Force Majeure, Consultant shall promptly provide notice to City, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within five days after Consultant first becomes aware that the event of Force Majeure will affect the performance of Services and the end of the restrictions, if any, on Consultant's ability to communicate with City. Consultant shall use its commercially reasonable efforts to mitigate the interruption or delay if it is reasonably capable of being mitigated.

ARTICLE 14
SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 City and Consultant bind themselves and their successors, executors, administrators and permitted assigns to the other Party of this Agreement and to the successors, executors, administrators and permitted assigns of such other party, in respect to all covenants of this Agreement.

14.2 No right or interest in this Agreement or any Work Order shall be assigned by Consultant or City without the prior written consent of the other Party.

14.3 Prior to commencement of any part of the Services to be provided under any Work Order with respect to which Consultant has elected to subcontract, Consultant will notify City in writing of the identity of the particular subcontractor, subconsultant or supplier Consultant intends to employ for the performance of such part of the Services and the scope of Services it will perform. City shall have the right within twenty-one (21) calendar days of such written notice to disallow Consultant's employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by Consultant as a result of such disallowance shall be borne by City.

ARTICLE 15
SEVERABILITY; NON-WAIVER

15.1 If any provision or portion thereof of this Agreement or any Work Order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Work Order and the balance of the Agreement or Work Order shall remain in full force and effect. The Parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the Parties.

15.2 Failure by City in any instance to insist upon observance or performance by Consultant of any term, condition or obligation of this Agreement shall not be deemed a waiver by City of any such observance or performance. No waiver by City of any term, condition, obligation or breach of this Agreement will be binding upon City unless in writing, and then will be for the particular instance specified in such writing only. Payment of any sum by City to Consultant with knowledge of any breach will not be deemed a waiver of such breach or any other breach.

ARTICLE 16
LICENSE REQUIREMENTS

16.1 The Consultant and any subconsultant shall have and maintain any licenses, registrations and certifications required by the State of Texas or recognized professional organizations governing the Services performed under this Agreement and any Work Order.

ARTICLE 17
ENTIRE AGREEMENT

17.1 This Agreement and all Work Orders issued under it contain the full and complete understanding of the Parties pertaining to their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the Parties, whether written or oral. The Agreement and Work Orders may be modified only in writing, signed by both Parties.

ARTICLE 18
GOVERNING LAW; VENUE

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles. Venue of all dispute resolution proceedings arising out of, connected with or relating to this Agreement, shall be in Bexar County, Texas.

ARTICLE 19
DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or relating to this Agreement, any Work Order or any Services which City and Consultant have been unable to resolve within thirty (30) days after such dispute arises, a senior representative of Consultant shall meet with the City Manager of City at a mutually agreed upon time and place not later than forty-five (45) days after such dispute arises to attempt to resolve such dispute. In the event such representatives are unable to resolve any such dispute within fifteen (15) days after such meeting, either Party may, by written notice to the other, submit such dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon a mediator within twenty (20) days after such written notice of submission to mediation, the American Arbitration Association shall be empowered to appoint a qualified mediator pursuant to the American Arbitration Association Construction Industry Mediation Rules. If the dispute is technical in nature, the mediator appointed by the American Arbitration Association shall be qualified by at least ten (10) years' experience in construction, engineering, and/or public works operations. The mediation shall be conducted within thirty (30) days of the selection or appointment of the mediator, as applicable. The mediation shall be held at a mutually agreeable location in Bexar County, Texas. If the Parties are unable to agree on a location, the mediation shall be held at the offices of the American Arbitration Association closest to San Antonio, Texas.

19.2 Any dispute arising out of or relating to this Agreement or any Work Order or any Services not resolved pursuant to Article 19.1, shall be resolved, by litigation in a court of competent jurisdiction.

19.3 Notwithstanding the foregoing, in the event City and any other consultant and/or any contractor are involved in a dispute in connection with a project for which Consultant has provided Services, and City, in its sole discretion, determines that Consultant's participation in any dispute resolution meeting or mediation proceeding between City and any such consultant and/or contractor is necessary to the resolution of such dispute, Consultant agrees to attend and participate at its own cost in any such dispute resolution meeting or mediation proceeding.

19.4 If Consultant brings any claim against City and Consultant does not prevail with respect to such claim, Consultant shall be liable for all attorneys' fees and costs incurred by City as a result of such claim.

ARTICLE 20
ELECTRONIC SIGNATURES; COUNTERPARTS

20.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Duplicate copies of duly executed and delivered counterparts of this Agreement shall be deemed to have the same full force and effect as originals and may be relied upon as such. Notwithstanding the foregoing, the Parties agree that this Agreement and any Work Order may be executed using electronic signatures at the option and in the discretion of City, and, in such event, the provisions of the Uniform Electronic Transaction Act, Chapter 332, Texas Business and Commerce Code, as amended, and any applicable policies and procedures of City regarding electronic signatures shall apply.

ARTICLE 21
CONFIDENTIALITY

21.1 Neither Consultant nor any of its subconsultants shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Services or the activities of City, unless such materials have first been reviewed and approved in writing by City. This provision shall not apply to mandatory reports which Consultant or its subconsultants are required by law to file with governmental authorities.

ARTICLE 22
GENERAL TERMS

22.1 Cumulative Mutual Remedies. In the event of default by a party herein, the other party shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret, or enforce, the terms of the Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

22.2 State or Federal Laws. This Contract is subject to all applicable federal and State laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, State or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

22.3 No Third Party Beneficiary. The Parties are entering into this Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year herein above first written.

CONSULTANT:	**CITY:**
Name	**City of Terrell Hills**
By:_____	By:_____
Name:_____	Willian Foley
Title:_____	City Secretary/Manager
Date:_____	Date:_____
ATTEST:	ATTEST:
_____	_____

ATTACHMENT A

Compensation terms for cost reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For professional and non-professional staff, City will compensate Consultant on the basis of a multiplier added to the Raw Salary Cost as shown in the table below for the Scope of Work specified in the Work Order. Professional is defined as a manager, supervisor, engineer, scientist or other recognized profession. Typically, professional employees are salaried exempt employees. Typically, non-professional employees are hourly non-exempt employees. The Raw Salary Cost for salaried employees is defined as the annual base salary excluding bonuses, burdens, and benefits divided by 2080. For hourly personnel, the Raw Salary Cost is defined as the hourly wage paid to the employee exclusive of burdens and benefits. Any shift premiums or premiums paid for hours worked in excess of 40 per week will be added to the base hourly wage and will be considered a part of the Raw Salary Cost.

(a) RAW SALARY MULTIPLIERS

X.XX for professional and non-professional staff working at Consultant or its subcontractor, subconsultant, or vendor offices

X.XX for professional and non-professional staff working in the field during construction or at City offices for a minimum period of six (6) consecutive months

X.XX for construction inspectors working in the field

(b) EXPENSES

"Billable Expenses" include all costs and expenses directly attributable to performance of the services, which are in good accounting practice direct costs of the Services and not covered by the allowance for payroll burden and general office overhead and profit. Costs of outside services will be charged at actual invoice cost plus ten percent (10%). "Billable Expenses" include: subconsultants; travel expenses to and from locations outside Bexar and Bexar County; and copies of all deliverables submitted to City. All local vehicle use outside Bexar and Bexar Counties will be reimbursed at the current IRS allowable rate with no markup. All other expenses are considered to be covered by the allowance for payroll burden and general office overhead and profit and are non-billable expenses.

A.2. LUMP SUM COMPENSATION

City will compensate Consultant on the basis of a mutually agreed upon lump sum price for the scope of work specified in the Work Order. City may ask Consultant for a cost estimate for the scope of work prior to issuing the Work Order. The cost estimate will include a summary

breakdown showing the labor hours and cost, subconsultant costs, and other direct costs included in the estimate. Labor rates to be used in preparing the estimate will be the actual salary or wage of the employee times the appropriate multiplier specified in A.1 (a) above. Consultant will submit and City will pay monthly invoices based on the mutually agreed upon percentage of the Project completed.

ATTACHMENT B

This Work Order is issued subject to, is governed by and incorporates by reference that certain Master Professional Services Agreement, Contract No. _____, between the City of Terrell Hills and Consultant effective _____, 2023.

Work Order Date: _____

CONSULTANT: _____

Consultant Project Manager: _____

City Point of Contact: _____

Type of Compensation: _____

Compensation: _____

Location of Services: (County) _____

Description of Services: _____

Deliverables: See Attached.

Schedule Requirements:

Commence Services: _____

Completion of Services: _____

Submittal Dates for Each Deliverable: See Attached.

Agreed to by:

CITY:

CITY OF TERRELL HILLS

By:_____
Name: Bill Foley
Title: City Secretary/Manager

CONSULTANT:

_____

By:_____
Name:_____
Title:_____

ATTACHMENT C
CERTIFICATE OF INSURANCE