PROFESSIONAL SERVICES AGREEMENT

FOR

PROFESSIONAL XX SERVICES

FOR

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Contract C1900XX
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This AGREEMENT entered into and executed this _____ day of __________ 2019, by and between the San Antonio River Authority (the RIVER AUTHORITY), a political subdivision of the State of Texas domiciled in Bexar County, Texas, hereinafter called the RIVER AUTHORITY, and (Vendor Name) hereinafter called CONSULTANT.

WHEREAS, the RIVER AUTHORITY desires to have in place and available a multi-disciplinary consultant team to support PROJECT, hereinafter called PROJECT. These services may include, but not limited to, those items as outlined in this AGREEMENT, and

WHEREAS, the CONSULTANT shall give consultation and advice to the RIVER AUTHORITY during the performance of services and will, in the scope of work, perform the services as outlined for the PROJECT in phases and/or parts, only as authorized by the RIVER AUTHORITY in subsequent written task orders, and

WHEREAS, the CONSULTANT has employees and sub consultants that are duly licensed and registered in the State of Texas, with the professional ability to provide services necessary to complete the PROJECT.

NOW, THEREFORE, be it resolved that the parties hereto do mutually agree as follows:

ARTICLE 1 - EMPLOYMENT OF THE CONSULTANT

1.1 The RIVER AUTHORITY agrees to retain the CONSULTANT, and the CONSULTANT agrees to provide services in connection with the PROJECT as set forth in Attachment A and the RIVER AUTHORITY agrees to pay, and the CONSULTANT agrees to accept fees as specified in the articles following as full and final compensation for the work accomplished. Billing rates for the PROJECT are in Attachment B.

1.2 The RIVER AUTHORITY shall coordinate all services for the PROJECT, and shall facilitate the exchange of information among any other consultants retained by the RIVER AUTHORITY for the PROJECT as necessary for the coordination of the work. Moreover, all communication between the CONSULTANT, the RIVER AUTHORITY, and any other consultants retained by the RIVER AUTHORITY shall be forwarded through the RIVER AUTHORITY unless otherwise authorized by the RIVER AUTHORITY or specifically provided in this AGREEMENT.

1.3 CONSULTANT agrees to perform its services with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional licenses. CONSULTANT agrees to perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent consultant. CONSULTANT will re-perform any services not meeting this standard without additional compensation provided that such standards have been mutually agreed upon prior to commencement of work.

ARTICLE 2 - CONSULTANT SERVICES AND RESPONSIBILITIES

2.1 GENERAL
2.1.1 The CONSULTANT shall perform services for the RIVER AUTHORITY as described in Attachment A. Except as set forth herein, the CONSULTANT shall not have any duties or responsibilities for any other part of the PROJECT.

2.1.2 The CONSULTANT shall designate, in writing, the representative(s) authorized to act in the CONSULTANT behalf with respect to this PROJECT.

2.1.3 The CONSULTANT services shall be performed in character, sequence and timing so they will be coordinated with those of the RIVER AUTHORITY, other engineers and designers, any other consultants, or any other reviewing authorities for the PROJECT.

2.1.4 The CONSULTANT shall recommend to the RIVER AUTHORITY any obtaining of such additional investigations, surveys, tests, analysis and reports as may be necessary for the proper execution of the CONSULTANT services.

2.1.5 The CONSULTANT shall provide progress copies of drawings, meeting minutes, reports, design calculations, specifications and other necessary information to the RIVER AUTHORITY, other engineers, any other consultants, or reviewing authorities in a timely manner and as it becomes available.

2.1.6 Although all aspects of the PROJECT produced by the CONSULTANT shall be coordinated by the RIVER AUTHORITY, the CONSULTANT shall become familiar with the work produced by the RIVER AUTHORITY, other engineers and designers, other consultants, and other interests as necessary for the proper coordination of the PROJECT.

2.2 SERVICES

2.2.1 Services to be performed as part of this AGREEMENT shall be in accordance with the scope of work as specified in Attachment A and the other terms and conditions of this AGREEMENT.

2.2.2 Services not included in the CONSULTANT scope of work or listed herein may be added later as negotiated and mutually agreed upon as additional services.

2.2.3 The CONSULTANT shall be responsible for negligent acts and errors of omission in performing all services and shall bear all costs for remedying the same.

**ARTICLE 3 - CONTROL BY THE RIVER AUTHORITY**

The RIVER AUTHORITY will have complete control of the services to be rendered and no work will be done under the contract until the CONSULTANT is authorized in writing to proceed with the work.

**ARTICLE 4 - TIME**
4.1 The CONSULTANT shall perform all services as expeditiously with professional skill and care and with due regard to the orderly progress of the work. The CONSULTANT, shall submit a written periodic monthly status report of the work in progress and estimated time for completion of work in progress for the RIVER AUTHORITY approval. The estimated time for completion, when approved by the RIVER AUTHORITY, shall not (except for reasonable cause along with a written approval) be exceeded by the CONSULTANT.

4.2 The work to be performed under this AGREEMENT shall commence on the date of execution and shall terminate one (1) year from the execution date, unless sooner terminated by either party under Article 5. This AGREEMENT may be extended for up to two (2) additional one (1) year periods by the mutual consent of the RIVER AUTHORITY and the CONSULTANT. Billing rates may be renegotiated annually prior to execution of an extension and shall not increase more than three (3) percent annually.

4.3 FORCE MAJEURE: The CONSULTANT shall not be responsible for any delay in the performance or progress of the work, or liable for any costs or damages sustained by the RIVER AUTHORITY resulting from such delay, caused by any act or neglect of the RIVER AUTHORITY or the RIVER AUTHORITY representatives, or by any third person acting as the agent, servant or employee of the RIVER AUTHORITY, or by changes ordered in the work, unless agreed upon in writing or as a result of compliance with any order or request of any federal, state or municipal government authority or any person purporting to act therefore, or by acts of declared or undeclared war or by public disorder, riot or civil commotion, or by any other cause beyond the control and without the fault or negligence of the CONSULTANT. In the event of any such delay, the CONSULTANT shall proceed with due diligence to alleviate such delay and continue the performance of all obligations under this AGREEMENT. The time during which the CONSULTANT is delayed in the performance of the work, shall be added to the time for completion of its services to the extent such time is specified in this AGREEMENT. All additional costs or damages resulting from any delay in the performance or progress of the work caused by any act or neglect of the RIVER AUTHORITY, its agents or representatives shall be borne entirely by the RIVER AUTHORITY.

ARTICLE 5 - TERMINATION OF AGREEMENT

5.1 This AGREEMENT may be terminated by either party upon thirty (30) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and may be terminated with or without cause upon sixty (60) days written notice.

5.2 Subject to the provisions of Article 9, and in the event of a termination that is not the fault of the CONSULTANT, the CONSULTANT shall be compensated for all services performed as of termination date.

ARTICLE 6 – INDEMNIFICATION

Select one of the following Article 6.1 depending on service, delete the other.

(SELECT FOR ACCOUNTANTS, ENGINEERS, APPRAISERS, ARCHITECTS AND SURVEYORS:)

THE CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE RIVER AUTHORITY HARMLESS FROM ANY DAMAGE, LIABILITY OR COST (INCLUDING REASONABLE ATTORNEYS’ FEES AND COST OF DEFENSE) TO THE EXTENT CAUSED BY THE CONSULTANT NEGLIGENT ACTS, ERRORS OR OMISSIONS IN THE PERFORMANCE OF ITS SERVICES UNDER THIS AGREEMENT AND THOSE OF HIS OR HER SUBCONTRACTORS OR ANYONE FOR WHOM THE CONSULTANT IS LEGALLY LIABLE.

(SELECT FOR ALL OTHERS)
CONSULTANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the RIVER AUTHORITY and the elected officials, employees, officers, directors, volunteers and representatives of the RIVER AUTHORITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the RIVER AUTHORITY directly or indirectly arising out of, resulting from or related to CONSULTANT activities under this AGREEMENT, including any acts or omissions or negligence of CONSULTANT, any agent, officer, director, representative, employee, sub-consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the RIVER AUTHORITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the RIVER AUTHORITY in writing within twenty-four (24) hours of any claim or demand against the RIVER AUTHORITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT cost. The RIVER AUTHORITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph. CONSULTANT further agrees to defend, at its own expense and own behalf of and in the name of the RIVER AUTHORITY, any claim or litigation brought against the RIVER AUTHORITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death or damage for which this indemnity shall apply, as set forth above.

ARTICLE 7 - INSURANCE REQUIREMENTS

Prior to the commencement of any work under this Agreement, the CONSULTANT shall furnish an original completed Certificate(s) of Insurance to Attn: Purchasing Department which shall be clearly labeled TYPE OF SERVICE in the Description of Operations block of the Certificate. The original Certificate(s) 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(s) or form 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 the RIVER AUTHORITY. The RIVER AUTHORITY shall have no duty to pay or perform under said AGREEMENT until such Certificate shall have been delivered to Attn: Purchasing Department, and no officer or employee, other than the RIVER AUTHORITY Director of Support Services, shall have authority to waive this requirement.

The RIVER AUTHORITY reserves the right to review these insurance requirements during the effective period of the AGREEMENT and any extension or renewal thereof and to modify insurance coverage and their limits when deemed necessary and prudent by the RIVER AUTHORITY risk manager, based upon changes in statutory law, court decisions or circumstances surrounding the AGREEMENT, but in no instance will the RIVER AUTHORITY allow modification whereupon the RIVER AUTHORITY may incur increased risk.

CONSULTANT financial integrity is of interest to the RIVER AUTHORITY, and, therefore, subject to CONSULTANT right to maintain reasonable deductibles in such amounts as are approved by the RIVER AUTHORITY, CONSULTANT shall obtain and maintain in full force and effect, for the duration of the AGREEMENT, and any extension thereof, at CONSULTANT sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the RIVER AUTHORITY.

The RIVER AUTHORITY insurance requirements include professional liability insurance in the amount of $1,000,000 per claim per year, commercial general liability insurance in the amount of $1,000,000 per occurrence, statutory workers'
compensation coverage, employer's liability insurance in the amount of $1,000,000 per occurrence and comprehensive automobile liability insurance in the amount of $500,000 per occurrence.

The RIVER AUTHORITY 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 the RIVER AUTHORITY, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to the RIVER AUTHORITY at an address provided by the RIVER AUTHORITY within ten (10) days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

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

Name the RIVER AUTHORITY and its officers, employees, volunteers and elected representatives as additional insured in respect to the operations and activities of, or on behalf of, the named insured performed under contract with the RIVER AUTHORITY, 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 RIVER AUTHORITY where the RIVER AUTHORITY is an additional insured shown on the policy;

Workers’ compensation and employers’ liability policy will provide a waiver of subrogation in favor of the RIVER AUTHORITY.

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

San Antonio River Authority
Attn: Purchasing Department
100 East Guenther
San Antonio, TX 78204

If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the RIVER AUTHORITY 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 the RIVER AUTHORITY is an alternative to other remedies the RIVER AUTHORITY may have and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies the RIVER AUTHORITY may have upon CONSULTANT failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the RIVER AUTHORITY shall have the right to order CONSULTANT to stop work under the AGREEMENT, and/or withhold any payment(s) which become due to CONSULTANT thereunder until CONSULTANT demonstrates compliance with the requirements hereof.
Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT or its subcontractors’ performance of the work covered under the AGREEMENT. It is agreed that CONSULTANT insurance shall be deemed primary with respect to any insurance or self-insurance carried by the RIVER AUTHORITY for liability arising out of operations under this contract.

**ARTICLE 8 - CONSULTANT ACCOUNTING RECORDS**

Records of reimbursable expense and expenses pertaining to all services shall be kept on the basis of generally accepted accounting principles and shall be available to the RIVER AUTHORITY at mutually convenient times.

**ARTICLE 9 - BASIS OF COMPENSATION**

9.1 The RIVER AUTHORITY shall compensate the CONSULTANT for the Scope of Services provided as assigned in the attached scope of work, in accordance with ARTICLE 10 and the other terms and conditions of this AGREEMENT.

9.2 All work under this AGREEMENT will be authorized in the form of a task order by mutual agreement between the CONSULTANT and the RIVER AUTHORITY. Each task order shall be issued based on a defined and specific scope of services, and shall, upon acceptance, become part of this AGREEMENT. In order to develop a task order, the RIVER AUTHORITY shall submit to the CONSULTANT a requested scope of work, as needed. The CONSULTANT shall then provide a detailed written proposal which includes a description of the services to be provided, the level of effort needed for the performance of the work, and the total cost to provide the scope of services requested. A task order will then be issued by RIVER AUTHORITY based on the written proposal provided by CONSULTANT. Any scope or cost change to an authorized task order must be approved in writing.

9.3 The CONSULTANT shall provide weekly status reports as required by the RIVER AUTHORITY to inform the RIVER AUTHORITY of the status of each task order assigned. CONSULTANT will provide written documentation of the payment of all sub consultants.

9.4 Compensation will be on a reimbursable basis at the rates listed in the attached scope of services section. Reimbursable expenses shall mean the actual expenses incurred directly or indirectly in connection with the PROJECT for sub consultants, telephone, shipping and other incurred expenses. Reimbursable expenses shall be considered at cost.

9.5 The RIVER AUTHORITY will not pay any indirect charges over the subcontractor bill. A copy of all subcontractor invoices must be included with request for reimbursement.

**ARTICLE 10 - PAYMENTS TO THE CONSULTANT**

10.1 All statements made to the RIVER AUTHORITY shall be itemized to include the hours worked, personnel classifications, salary cost, a summary of work performed, and such other information as the RIVER AUTHORITY may require to substantiate invoiced amounts.
10.2 Payment for all services and reimbursable expenses, at cost, shall be made monthly within thirty days after presentation of the CONSULTANT statement of services rendered. The billing period for services will be calendar months. All receipts, statements, etc. must be included in monthly billings.

10.3 Payment for any services which exceed the contract price upper limit cannot be made without a request to change the contract price upper limit in writing to the RIVER AUTHORITY and written authorization from the RIVER AUTHORITY is obtained. Advance notice and authorization for SERVICES beyond the contract upper limit amount is necessary to ensure prompt processing of payment.

10.4 PAYMENTS WITHHELD

10.4.1 No deductions shall be made from the CONSULTANT compensation on account of penalty, liquidated damages or other sums withheld from payments to CONSULTANT, or on account of the cost of changes in the work unless the RIVER AUTHORITY believes in good faith that the CONSULTANT is legally liable.

10.4.2 If the RIVER AUTHORITY objects to any statement submitted by the CONSULTANT, the RIVER AUTHORITY shall so advise the CONSULTANT verbally or in writing, giving reasons within twenty-one (21) days of receipt of such statement. No interest accrual shall be permitted on any invoice under dispute.

10.5 If the PROJECT is suspended or abandoned in whole or in part for more than six (6) months for reasons other than the fault of the CONSULTANT, the CONSULTANT shall be compensated for all services performed prior to receipt of written notice from the RIVER AUTHORITY or its representative of such suspension or abandonment, together with reimbursable expenses then due. If the PROJECT is resumed after being suspended for more than six (6) months, the CONSULTANT compensation may be re-negotiated. If requested by the RIVER AUTHORITY, the CONSULTANT shall deliver to the RIVER AUTHORITY all notes, minutes and drawings completed to the date of abandonment or suspension.

ARTICLE 11 - SEVERABILITY

If for any reason, any part of this AGREEMENT is held invalid, such judgment will not affect the remaining portion of this AGREEMENT, which shall remain in full force and effect.

ARTICLE 12 - OWNERSHIP AND USE OF DOCUMENTS

12.1 The RIVER AUTHORITY shall own the drafts and the final copies, including reproducible copies of the CONSULTANT documents and reports prepared pursuant to this AGREEMENT and may freely use them in connection with the services provided pursuant to this AGREEMENT. Authorization to reuse, modify or utilize any of the documents and reports that have been sealed by a licensed professional for any purpose other than the services provided pursuant to this AGREEMENT shall not be unreasonably withheld by CONSULTANT. The RIVER AUTHORITY agrees to waive any claim against the CONSULTANT arising from any unauthorized reuse or modification of the documents and reports that have been sealed by a licensed professional for any purpose other than the services provided pursuant to this AGREEMENT. Submission of the documents and reports to meet official regulatory requirements or for other purposes in connection with the services provided pursuant to this AGREEMENT shall not be construed as publication in derogation of the RIVER AUTHORITY rights.
12.2 Documents and reports provided in electronic media form shall not have inaccuracies and anomalies including errors due to electronic translation, formatting or interpretation. In the event of any inconsistency between the electronic media and hard copies provided by the CONSULTANT, the hard copy shall govern. The CONSULTANT is responsible for errors and omissions because of these conditions and not for those resulting from conversion, modification, misinterpretation, misuse or reuse by others after electronic media is released by CONSULTANT.

12.3 CONSULTANT is required to make any information created or exchanged with the RIVER AUTHORITY pursuant to this AGREEMENT, and not otherwise subject to exception from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the RIVER AUTHORITY.

ARTICLE 13 - EXTENT OF AGREEMENT

13.1 This AGREEMENT represents the entire and integrated AGREEMENT for the PROJECT between the RIVER AUTHORITY and the CONSULTANT and supersedes all prior negotiations, representations or agreement, either written or oral. This AGREEMENT may be amended, changed or varied only by written instrument signed by both the RIVER AUTHORITY and the CONSULTANT.

13.2 SUCCESSORS AND ASSIGNS: It is mutually understood and agreed that this AGREEMENT shall be binding upon the RIVER AUTHORITY and its successors and assigns and upon the CONSULTANT, its successors and assigns. Neither party shall assign nor transfer its interest in this AGREEMENT or any part thereof without the written consent of the other party.

SAN ANTONIO RIVER AUTHORITY

By: ___________________________  Date: _________________
      SUZANNE B. SCOTT
      General Manager

Attest: ___________________________
      STEPHEN GRAHAM
      Assistant Secretary

Approved as to form: ___________________________

      ALLISON ELDER
      Director of Legal Services

COMPANY NAME

By: ___________________________  Date: _________________
Name: ___________________________
Title: ___________________________
ATTACHMENT A

SCOPE OF WORK
ATTACHMENT B
RESPONSE TO REQUEST FOR PROPOSAL

“Attached as a separate document”