

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
PROCUREMENT PROCESS MAPPING SERVICES**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation acting by and through its City Manager, pursuant to City Ordinance No. \_\_\_\_\_, passed and approved the \_\_\_\_ day of 2023, and Civic Initiatives, LLC (“Consultant” or “Contractor”) a corporation organized and existing under the laws of Texas both of which may be referred to as the ‘Party’ or collectively as the “Parties.”

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

**I. DEFINITIONS**

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

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Consultant” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Directors” shall mean the directors of City’s Economic Development and Finance Departments.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement under Article VII Termination, the term of this Agreement the term of this Agreement shall be for a period of one (1) year commencing upon execution by all Parties.

**III. SCOPE OF SERVICES**

3.1 Consultant agrees to provide the professional services outlined in Exhibit A. Scope of Services, attached and incorporated hereto for all purposes, in exchange for the compensation described in Article IV. Compensation.

3.2 All work performed by Consultant hereunder shall be performed to the satisfaction of Directors. The determination made by Directors shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Directors. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to Directors; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, should City elect not to terminate.

**IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant’s performance in a satisfactory and efficient manner, as determined solely by Directors, of all services and activities set forth in this Agreement, to include all travel and other expenses, City agrees to pay Consultant a fixed fee of up to **One Hundred and Thirty-One Thousand One Hundred and Fourteen Dollars and Forty-Eight Cents (\$131,114.48)**. Consultant acknowledges that such fixed

fee shall be sufficient for full and final compensation for all services to be performed pursuant to or associated with the Scope of Services.

4.2 Upon receipt of a valid and complete invoice, the aforementioned compensation will be disbursed in three installments, as follows:

4.2.1 **TWELVE THOUSAND FIVE HUNDRED AND ELEVEN DOLLARS AND EIGHTY-SIX CENTS (\$12,511.86)** payable upon delivery of all Phase 1 deliverables, which are to be completed no later than **November 30, 2023**.

4.2.2 **THIRTY-TWO THOUSAND NINE HUNDRED AND FORTY DOLLARS AND FORTY EIGHT CENTS (\$32,940.48)** payable upon completion of the Current State Discovery interviews, which are to be completed no later than **December 22, 2023**.

4.2.3 **THIRTY-THREE THOUSAND SIX HUNDRED AND THIRTY DOLLARS AND TWENTY-FOUR CENTS (\$33,630.24)** payable upon receipt of the Final Current State Benchmark Brief and Final Current State Process Maps deliverables, which are to be completed no later than **February 9, 2024**.

4.2.4 **THIRTY-TWO THOUSAND ONE HUNDRED AND SEVENTY-SIX DOLLARS AND THIRTY EIGHT CENTS (\$32,175.38)** payable upon completion of the Needs Assessment Brief deliverable, which is to be completed no later than **April 5, 2024**.

4.2.5 **NINETEEN THOUSAND EIGHT HUNDRED AND FIFTY-FIVE DOLLARS AND FIFTY-TWO CENTS (\$19,855.52)** payable upon completion of the Transformation Roadmap deliverable, which is to be completed no later than **May 24, 2024**.

<b>Deliverable</b>	<b>Timeline</b>	<b>Total Cost</b>
Phase 1 Project Mobilization Deliverables	Complete by 11/30/2023	\$12,511.86
Phase 2 Current State Discovery Deliverables	Complete by 12/22/2023	\$32,940.48
Phase 2 Final Current State Benchmark Brief & Current State Process Maps	Complete by 2/9/2023	\$33,630.24
Phase 3 Needs Assessment Brief	Complete by 4/5/2023	\$32,176.38
Phase 4 Transformation Roadmap	Complete by 5/24/2023	\$19,855.52
<b>TOTAL</b>		<b>\$131,114.48</b>

4.3 Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio Economic Development Department, P.O. Box 839966, San Antonio, Texas 78283-3966. Alternatively, invoices shall be submitted electronically via email to [accounts.payable@sanantonio.gov](mailto:accounts.payable@sanantonio.gov), with a copy to City Project Manager. City shall pay such invoices by Automated Clearing House (ACH) electronic payment, net of all duties and bank charges to an account specified by Consultant.

4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The Parties agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant for the original contract term cannot

exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, subject to Article XV. Amendments.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Directors. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

4.6 Within ten (10) working days of City's written request therefor, Consultant shall refund to City any sum of money paid by City to Consultant later determined to:

- 4.6.1 Have resulted in overpayment to Consultant;
- 4.6.2 Have not been spent by Consultant strictly in accordance with the terms of the Agreement; or
- 4.6.3 Not be supported by adequate documentation to fully justify the expenditure.

## **V. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY**

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

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.3 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to writings, documents and information used by Consultant in the course of delivering the services hereunder, and any know-ho, methodologies, or processes used by the Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole the exclusive property of Consultant or supplies.

## **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal, and the record retention period established, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years ("retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention at Consultant's expense.

6.3 Consultant shall notify City immediately in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant

understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions of this Agreement.

7.2 Termination Without Cause. This Agreement may be terminated by the City upon fifteen (15) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. In the event of Termination Without Cause, Consultant shall be compensated for any work it has already done pursuant to this Agreement.

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

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

7.3.2 Amy material breach of the terms of this Agreement, as determined solely by City.

2. Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

2.1. Failing to perform or failing to comply with any covenant or provision required under this Agreement; or

2.2. Performing unsatisfactorily.

2.3. Bankruptcy or selling substantially all of company's assets.

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

7.6 Regardless of how this Agreement is terminated, Consultant shall return all unearned payments to City within 30 calendar days of such termination. Payments shall be deemed unearned if they are for work not accepted by City under Sections 3.2 and 4.3.

1. Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or

partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

2. Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said 45 calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

3. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

4. Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or 3 calendar days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Brenda Hicks-Sorensen, Director  
Department of Economic Development  
Box 839966  
San Antonio, Texas 78283-3966  
Email: [brenda.hicks-sorensen@sanantonio.gov](mailto:brenda.hicks-sorensen@sanantonio.gov)

If intended for Consultant, to:

Civic Initiatives, LLC  
Derrek Davis, Director of Engagements & Chief Operations Officer  
7000 N Mopac Expressway, Suite 200  
Austin, Texas 78731  
Email: [ddavis@civicinitiatives.com](mailto:ddavis@civicinitiatives.com)

## IX. NONDISCRIMINATION

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

## **X. INSURANCE**

10.1 No later than 30 days before the scheduled work under this Agreement, CONSULTANT must provide a completed Certificate(s) of Insurance to City's Economic Development Office. The certificate must be:

- clearly labeled with the legal name of the event in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent's signature, and phone number.

10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Economic Development Office. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

10.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, CONSULTANT certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the events or activities performed under this Agreement.

10.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

10.5 Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, at CONSULTANT'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the Consultant claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Consultants	For Bodily Injury and Property Damage of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

<u>TYPE</u>	<u>AMOUNTS</u>
2. Professional Liability (Claims-made Coverage)	<p>\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.</p> <p>*Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>

10.6 CONSULTANT must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONSULTANT and provide a certificate of insurance and endorsement that names CONSULTANT and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

10.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. CONSULTANT must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio  
Economic Development Department  
100 W. Houston St., Ste. 1800  
San Antonio, TX 78205

10.8 CONSULTANT's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- Consultant shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT'S performance should there be

a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.10 In addition to any other remedies CITY may have upon CONSULTANT'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONSULTANT to stop work and/or withhold any payment(s) which become due to Consultant under this Agreement until CONSULTANT demonstrates compliance with requirements.

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

10.12 CONSULTANT'S insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

10.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

10.14 CONSULTANT and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

## **XI. INDEMNIFICATION**

11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, property damage and intellectual property right infringement, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this AGREEMENT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, 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. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.3 CONSULTANT shall advise the CITY in writing within one business day of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT'S activities under this AGREEMENT.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days



of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 The use of any subcontractor(s) requires the prior written approval of Directors.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees.

12.4 Except as otherwise stated, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of Directors. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor contractor, assignee, transferee or subcontractor.

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

## **XIII. INDEPENDENT CONTRACTOR**

13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties understand and agree that

the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

#### **XIV. CONFLICT OF INTEREST**

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

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

14.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Consultant further warrants and certifies that it was tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

#### **XV. SBEDA PROGRAM**

15.1 The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the City. Consultant agrees to comply with the SBEDA Ordinance Compliance Provisions attached and incorporated in this Agreement as **Exhibit B**, which Consultant understands are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual. Unless defined in a contrary manner herein, terms used in the SBEDA provisions shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

#### **XVI. AMENDMENTS**

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant and subject to City Council approval as evidenced by passage of an ordinance. Notwithstanding the foregoing, the City Manager or his/her designee may execute amendments that do not relate to City’s funding under this Agreement.

## **XVII. SEVERABILITY**

17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XVIII. STANDARD OF SERVICES**

18.1 Consultant shall provide services in a professional and workman-like manner, consistent with the highest standards of the industry.

18.2 Consultant shall use commercially reasonable efforts to advise San Antonio of any legislation, rule, regulation or other law (including but not limited to any customs, tax, trade, intellectual property or tariff law) in the Territory which has or may have a material effect on any provision of this Agreement.

## **XIX. STATE PROHIBITIONS ON CERTAIN CONTRACTS**

19.1 This Article only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

19.2 “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

### 19.3 Prohibition on Contracts with Companies Boycotting Israel.

Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

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

Contractor hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company’s verification. If found to be false, City may terminate the contract for material breach.

### 19.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Contractor hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### 19.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Contractor hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### 19.6 Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, Or Foreign Terrorist Organization

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that:

- (1) it is not identified on such a list; and
- (2) that it will notify City should it be placed on such a list during the term of this contract.

City hereby relies on Consultant's verification. If found to be false, or if Consultant is identified on such list during the term of this contract, City may terminate this contract for material breach.

## **XX. NONWAIVER OF PERFORMANCE**

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee contained in this Agreement. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, when required. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Agreement or by law or in equity.

## **XXI. LAW APPLICABLE**

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

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

## **XXII. LEGAL AUTHORITY**

22.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of its terms, conditions, provisions and obligations.

## **XXIII. PARTIES BOUND**

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

## **XXIV. CAPTIONS**

24.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXV. INCORPORATION OF EXHIBITS**

25.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be interpreted in the order of priority as appears below:

Exhibit A. Scope of Services

Exhibit B. SBEDA Ordinance Compliance Provisions

Exhibit C. CITY's RFP No. 23-090; RFx 6100016878, including any addendums, exhibits, and attachments

**XXVI. ENTIRE AGREEMENT**

26.1 This Agreement, together with its exhibits, if any, constitute the final and entire agreement between the Parties and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties, unless same be in writing, dated subsequent to the effective date, and duly executed by the Parties, in accordance with Article XV. Amendments.

-----*Signatures to follow*-----

**EXECUTED** and **AGREED** to by the Parties to be effective upon the date of signature of the last Party to sign.

**CITY OF SAN ANTONIO**

**CIVIC INITIATIVES, LLC**

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Name: Erik Walsh  
Title: City Manager

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Date



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Name: Derrek Davis  
Title: Director of Engagements & Chief Operating Officer

11/1/2023

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Date

Approved as to Form:

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Assistant City Attorney

## **Exhibit A. SCOPE OF SERVICES**

### **City of San Antonio Procurement Process Mapping and Improvement Plan**

The City of San Antonio (City) is entering into a contract with Civic Initiatives LLC (Consultant) that shall provide a series of workflow maps to capture the “as-is” procurement processes for all formal and informal solicitations issued by City of San Antonio. These will include all industry categories (i.e., goods & supplies, professional services, construction, architecture & engineering, and other services) and all types of solicitations including, but not limited to, invitation for bids, request for proposals, request for qualifications, request for competitive sealed proposals, and request for offer. In addition, the Consultant shall provide recommendations and best practices for all internal City procurement operations, processes, and systems, that improve the efficiency, effectiveness, and accessibility for local small, minority, woman, and veteran-owned businesses (S/M/W/VBEs). The Consultant will also focus on timelines for procurement processes from when a department decides to buy commodities/ services, vendors registration process, internal committee reviews, releasing a solicitation, submission of bids, bid review/evaluation, award of contracts, and vendor receives their first payment.

The entire scope of services for the project is as follows below. All elements in the scope of services below shall be pre-approved by the City’s Economic Development Department (EDD) and Finance Department before implementation.

#### **Phase 1 – Project Mobilization**

Consultant will complete the following tasks necessary to ensure that key project elements are aligned and agreed to, and that necessary logistics are addressed to ensure project success:

- Establish a City portal for housing of the project plan, dashboard, and other relevant project documentation.
- Draft finalized project work plan and schedule for approval from EDD/Finance Department.
- Facilitate meeting with executive project team to review the project work plan and schedule to ensure alignment regarding project goals, deliverables, roles and responsibilities, and project success.
- Facilitate a meeting with City Project Manager to discuss key contract elements, project management requirements, project logistics, administrative contract items (e.g., invoicing and payment), and the City portal.
- Facilitate formal project Kickoff Meeting with City identified project stakeholders.
- Work with City Project Manager to submit a formal request for documents necessary to gain a foundational understanding of City procurement practices.
- Coordinate with City Project Manager to identify and schedule stakeholder interviews necessary to complete discovery for Phase 2.

#### **Phase 2 – Current State Workflow Mapping**

Consultant will complete the following tasks to provide workflow maps to capture the “as-is” procurement processes for all formal and informal solicitation types:

- Catalog and review current policy, procedure, and process documentation related to the procurement functions.
- Identify, collect, and review additional key documents related to the procurement function.
- Evaluate the current organizational structures, roles and responsibilities related to the procurement in place function.
- Review and assess current enterprise and strategic procurement efforts.
- Review and assess current technologies supporting the procurement function.



- Identify any strategic direction that affects procurement practices.
- Conduct a maximum of thirty (30) interviews with key internal stakeholders identified by City to identify and document current state work stream practices. City may request that additional interviews be conducted, as needed.
- Conduct a maximum of ten (10) interviews with key City vendors and a maximum of two (2) focus group interviews with a maximum of ten (10) invited City vendors to identify and document current practices, challenges and recommendations for improvement. City may request that additional interviews be conducted, as needed.
- Identify and develop eleven (11) process maps for the following key procurement processes which must include the bid review/evaluation process and Council approval process for each map.
  - 1) Buy Decision
  - 2) Vendor Registration
  - 3) Bidding Processes
  - 4) Informal Procurements (\$50,000 and below)
  - 5) Invitation for Bid Solicitations (annual and one-time formals)
  - 6) Include Internal Committee Reviews within City departments (e.g., IT Review Committee) and City Council Meetings (e.g., Audit Committee and Council B Session)
  - 7) Request for Proposal/Qualification/Competitive Sealed Proposals Solicitations
  - 8) Request for Offer Solicitation (Sole Source/Cooperative)
  - 9) Contract Development & Execution
  - 10) Invoice Processing & Payment
  - 11) Centralized Contract Management and Compliance (that is directed by Administrative Policy)
- Develop and administer an internal survey to gather additional feedback from key process stakeholders, as identified by the City.
- Develop and administer an external survey to gather additional feedback from key vendors, as identified by the City.

The Consultant's current state workflow maps will meet all the following criteria:

- The workflow should begin from when a department submits a procurement request to Finance Department and conclude when a vendor awarded a contract receives their first payment.
- Processes should be categorized as a requirement by federal, state, or local laws and include City requirements not dictated by law.
- The workflow should include average timelines associated with each process by City staff.
- The workflow should include all supplemental procurement processes, such as the Audit Committee, Small Business Economic Development Advocacy (SBEDA) Program, Local Preference Program (LPP), and Veteran Owned-Small Business Program (VOSB), and Disadvantaged Business Enterprise (DBE)/Airport Concession Disadvantaged Business Enterprise Programs (ACDBE), when applied.

The Consultant will provide a briefing document ("Current State Benchmarking Brief") to accompany the workflow maps, which will document the research performed and summarize the current state of procurement lifecycle practices.

### **Phase 3 – Gap Analysis & Needs Assessment**

The Consultant will complete the following tasks to identify peer and industry best practices, assess gaps, and provide recommendations for discrete action to address identified gaps:

- Work with City-identified stakeholders to identify and document a target future state.
- Compare the current state to target future state to identify gaps.
- Compare and contrast the procurement function to peer entities with similar maturity levels.

- Compare and contrast the procurement function to applicable benchmarks for public procurement operations, including timelines.
- Compare and contrast the procurement function to applicable leading practices for public procurement operations, including timelines.
- Assess current solicitation procurement process system capabilities to address identified gaps.
- Develop recommendations for discrete projects or risk mitigation strategies that seek to address identified gaps.
- Identify vendor interactions with various City systems (i.e., Central Vendor Registry to register as a vendor with the City, SAP, and San Antonio Electronic Procurement System (SAePS)/CivCast in which vendors identify solicitations and submit bids), along with the vendor payment process (inclusive of Primelink and accounts payable systems).
- Review City of San Antonio contract requirements/language, insurance/liability requirements, bonding requirements, and other solicitation criteria to determine if any are resulting in restrictive bidding practices. If any are identified, provide recommendations to address and minimize the barrier for S/M/W/VBEs.
- Collaborate with the Finance Department and Information Technology Services Department regarding upgrades to the SAP system in relation to internal procurement and payment processes.

#### **Phase 4 – Transformation Roadmap Development**

Leveraging findings from Sections 1 through 3 above as well as the Supply SA Playbook, the Consultant will provide recommendations for operations, processes, and systems that improve the efficiency and effectiveness of all formal and informal procurement processes and makes it easier for City staff and S/M/W/VBEs to navigate. Specifically, the Consultant will complete the following tasks to develop the strategy and action plan (the “Transformation Roadmap”) for the City to meet its future state and transformational goals:

- Develop a plan for each project included in the strategy and action plan (the “Transformation Roadmap”) including the following attributes:
  - Project description,
  - Project benefits,
  - Project implementation timeframe,
  - Project dependencies,
  - Project estimated level of effort,
  - Project estimated cost,
  - Project implementation tasks, and
  - Additional attributes requested by City staff, as needed.
- Develop an implementation timeline that prioritizes, and sequences recommended projects to ensure success in transitioning the City to the identified target state. Recommendations will also be broken down by cost or no-cost enhancements.
- Provide policy guidance identifying short term options implementable through existing policy, and long-term options that may require policy change.
- Identify dependencies that may affect the ability to implement validated project set.
- Identify expected operational efficiencies and improvements of service capacity likely to result from identified activities.
- Provide recommendations, as applicable, to align with supplemental efforts to upgrade the City’s SAP system.
- Provide recommendations on how best to advertise and raise awareness of formal and informal solicitations to S/M/W/VBEs, as well as facilitate prime and subcontractor match making opportunities.

This includes providing best practices to communicate with existing S/M/WVBES contractors and registrants, as well as engaging with “new” S/M/W/VBES who are unaware of City contracting opportunities and may want to participate.

### Timeline and Key Deliverables

Deliverables Due Date	Deliverables
<b>Phase 1 – Project Mobilization (Weeks 1 – 7)</b>	
13 Nov – 30 Nov 2023	City Portal with Project Plan and Dashboard Project Executive Meeting Project PM Huddle Meeting Discovery Document Request (list of request documents) Initial Interview Request List Project Kickoff Meeting Focus Group Meetings
<b>Phase 2 – Current State Workflow Mapping (Weeks 8 – 14)</b>	
30 Nov – 22 Dec 2023	Current State Discovery
2 Jan – 25 Jan 2024	<i>Draft</i> Current State Benchmark Brief <i>Draft</i> Current State Process Maps
26 Jan – 9 Feb 2024	Final Current State Benchmark Brief Final Current State Process Maps
<b>Phase 3 – Gap Analysis &amp; Needs Assessment (Weeks 15 – 23)</b>	
12 Feb – 20 Mar 2024	<i>Draft</i> Needs Assessment Brief
21 Mar – 5 Apr 2024	Final Needs Assessment Brief
<b>Phase 4 – Transformation Roadmap Development (Weeks 24 – 30)</b>	
8 Apr – 2 May 2024	<i>Draft</i> Transformation Roadmap
3 May – 24 May 2024	Final Transformation Roadmap

All deliverables listed above will be provided to the City in electronic format compatible with City systems.

The Consultant will present the above deliverables and other key work products to City Council and/or City Council Committees, as requested by the City.

## Exhibit B. SBEDA Ordinance

### I. SBEDA Program – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives (API) to this contract. CONSULTANT hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are necessary to attain satisfactory performance under this Agreement:

## **II. SBEDA Program Compliance**

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program.

Please note that failure to meet the subcontracting API requirements (when applicable) will deem the response non-responsive. To be SBEDA eligible a Prime or Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency AND must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area. The guidelines and steps to be certified by SCTRCA are available at: <https://sctrca.org/get-certified/>.

**SBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE (see Small Business Enterprise definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

**M/WBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see Minority/Women Business Enterprise definition), CONSULTANT agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

The Subcontractor/Supplier Utilization Plan which CONTRACTOR submitted to City with its response for this contract and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

## **III. SBEDA Program Compliance – General Provisions**

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department,

pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.
9. For more information, please see link: <http://www.sanantonio.gov/SBO/Compliance>

#### **IV. Violations, Sanctions and Penalties**

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.
6. Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:
  - a. Suspension of contract
  - b. Withholding of funds
  - c. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance
  - d. Refusal to accept a response or proposal
  - e. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

#### **V. Commercial Nondiscrimination Policy Compliance**

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### **VI. Prompt Payment**

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.