

**PROFESSIONAL SERVICES AGREEMENT
FOR
SYSTEM INTEGRATION FOR SAP SUCCESS FACTORS**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement (the “Agreement”) is entered into by and between the **City of San Antonio**, a Texas Municipal Corporation (“City” or “COSA”) acting by and through its Director of the Finance Department or designee, or Director of the Information Technology Services Department or designee, pursuant to Ordinance No. _____ passed and approved on the ____ day of _____, 20____ and **Accenture LLP**, by and through its Managing Director (“Accenture” or “Consultant”). City and Consultant may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

ARTICLE I
DEFINITIONS

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

- 1.0 “Acceptance Process” means the process set forth in Section 3.3.
- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “City Council” is the City of San Antonio City Council.
- 1.3 “COSA” shall mean City or City of San Antonio.
- 1.4 “Consultant” is defined in the preamble of this Agreement and includes its successors.
- 1.5 “Director” shall mean the City’s Director of the Finance Department or designee, or Director of the Information Technology Services Department or designee, unless otherwise specified.

- 1.6 “ESS” shall mean Employee Self-Service.
- 1.7 “HRIS” shall mean Human Resources Information System.
- 1.8 “LMS” shall mean Learning Management System.
- 1.9 “Local Government Record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.
- 1.10 “MSS” shall mean Manager Self-Service.

ARTICLE II
TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall begin upon the effective date of the ordinance awarding the contract and remain in full force and effect for a two-year period.
- 2.2 Renewals. At City’s option, this Agreement may be renewed and extended beyond the date stated above under the same terms and conditions for up to two additional, one-year periods. Renewals shall be in writing and signed by Director or designee and Consultant. An election by City not to renew this Agreement shall require no action or notification by the City to Consultant.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

ARTICLE III
SCOPE OF SERVICES

- 3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services and more specifically detailed in the Statement of Work (“Services”), **Attachment C**, 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 Director through the Acceptance Process. The determination made by Director shall be

final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not accepted by Director. 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 accepted by the Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work until it complies with applicable specifications, as stated herein, even should City elect not to terminate.

- 3.3 Acceptance Process. All deliverables submitted to the City hereunder shall be submitted to a designated City employee (Designated City Employee) for approval and that such deliverables comply in all material respects with the requirements as set forth in **Attachment C**, Statement of Work. If there are material issues, within 5 days of deliverable submission the Parties will escalate resolution of such issues by escalating to higher levels of management.

In the event of any material nonconformity or nonfunctionality of deliverables with their applicable requirements, Designated City Employee shall provide Consultant written notification within 7 business days of delivery. Upon receipt of such notice of nonconformity or nonfunctionality, Consultant shall have 14 days to cure the nonconformity or nonfunctionality.

Upon delivery of the cure, the City will have 7 business days to evaluate and determine if such cure is acceptable. In the event the Deliverable remains unacceptable, Designated City Employee will provide a second notice of nonconformity or nonfunctionality of the system within 7 business days of delivery. Consultant shall have an additional 14 days to cure the nonconformity or nonfunctionality.

Upon delivery of the cure, the City will have 7 business days to evaluate and determine if such cure is acceptable. In the event the Deliverable contains the same material nonconformity or nonfunctionality of applicable requirements, remaining unacceptable, Designated City Employee will provide Consultant with a third notice of any nonconformity or nonfunctionality of the system which shall constitute breach of contract in which City may immediately terminate in part for cause for such Deliverable.

Upon submission of each deliverable, a retainage in the amount of 5% of the deliverable price shall be held by the City for all deliverables not labeled as Final Module Deliverable or Final Project Deliverable, to be paid upon City's acceptance of either the Final Project Deliverable (for deliverables indicated as "Core Deliverables" in Section 3.3.1 below) or the Final Module Deliverable of the associated Module (for deliverables indicated as "Module Deliverables" in Section 3.3.1 below) ("Retainage") respectively. The City Project Team will review for approval and Designated City Employee shall sign off on each deliverable.

3.3.1 Designation of Deliverables

Module Deliverables:

- (a) Module Benefit Focus: SFRQ2BF, SFGAPBF, SFKDDBF, SFRQ5BF, SFDC1BF, SFDC5, SFBP1BF, SFDC6BF, SFDC6BF, SFTS2BF, SFDD4BF, SFCM10BF, SFUT3BF, SFSR4BBF, SFDD2BF, SFSI2BF, SFPM10BF, SFXD13BF, SFAT2, SFCM3BF, SFPM15BF

Module Benefit Focus Final Module Deliverable: SFPM14BF

- (b) Module Employee Central Service Center: SFRQ2SC, SFBP1SC, SFTS1SC, SFRQ5SC, SFDD2SC, SFDD4SC, SFUT3SC, SFSR4bSC, SFCM10SC, SFPM10SC, SFSI2SC, SFPM15SC, SFCM3SC, SFXD13SC

Module Employee Central Service Center Final Module Deliverable: SFPM14SC

- (c) Module WorkZone: SFKDDWZ, SFRQ2WZ, SFXD2, SFXD3, SFXD11, SFXD4, SFXD5, SFXD6, SFXD7, SFXD8, SFXD9, SFXD10, SFPM15WZ, SFXD13WZ, SFXD12

Module WorkZone Final Module Deliverable: SFPM14WZ

- (d) Learning Management Module: SFRQ2LMS, SFKDDLMS, SFDC1LMS, SFBP1LMS, SFRQ5LMS, SFDC6LMS, SFTS2LMS, SFDD2LMS, SFDD4LMS, SFCM10LMS, SFUT3LMS, SFDC6LMS, SFSR4BLMS, SFSI2LMS, SFPM10LMS, SFXD13LMS, SFCM3LMS, SFPM15LMS

Module Learning Management Final Module Deliverable: SFPM14LMS

- (e) Core Deliverables:

SFPM1, SFCM1, SFPE1, SFPE4, SFRM1, SFDD1, SFPM8, SFPM11, SFPM12, SFPM13, SFPM2, SFOC1, SFOC5, SFOC6, SFPM13, SFQA1, SFTR1, SFUT1, SFSI1, SFIT1, SFAT1, SFPM9, SFXD1, SFTR6, SFOC7, SFOC8, SFCM11, SFRQ2EC, SFKDDEC, SFRQ5EC, SFDC1EC, SFDC6EC, SFBP1EC, SFTS2EC, SFDC6EC, SFDD2EC, SFDD4EC, SFCM10EC, SFUT3EC, SFDC6LEC, SFSR4BEC, SFCM12, SFSI2EC, SFPM10EC, SFXD13EC, SFCM3EC, SFPM15EC, SFPM14EC

- (f) Final Project Deliverable: SFPM14EC

Acceptance of Final Project Deliverable. Upon Consultant's submission of the Final Project Deliverable, a retainage in the amount of 100% of the deliverable price shall be held by the City, to be paid upon City's final acceptance. City shall review the Final Project Deliverable during the warranty and stabilization period after go-live which is one month for SAP SuccessFactors and Benefitfocus.

Acceptance of Final Module Deliverables. Upon Consultant's submission of a Final Module Deliverable, a retainage in the amount of 100% of the deliverable price shall be

held by the City, to be paid upon City's final acceptance of that Module. City shall review each Final Module Deliverable during the warranty and stabilization period after go-live for that Module which is one month.

- 3.4 Consultant will work closely with internal COSA stakeholders and third-party partners to realize the following benefits:
- Improved employee satisfaction due to a modern user interface.
 - Increased service efficiencies from process automation.
 - High-level improvement targets are listed in the HR Functional Services section below.
 - Targeted data-driven decision making using embedded analytics.
 - Improved integration capabilities to work more securely and flexibly with COSA partners.
 - Enhanced compliance capability with applicable Federal, State and local law, and compliance with COSA policies and processes.
 - Reduction/elimination of employee's need to provide Personal and Private Information (PPI) via paper to complete HR transactions (e.g., direct deposit, benefit enrollment, etc.).
 - The employee should be able to complete the transaction without the need of HR data input and attach any required PPI documentation via scan and our upload of documents into SAP.
 - In addition to Phase 1 (Success Factors, LMS, Benefits), an examination of other HR Functional Modules (Talent Acquisition/Recruiting, Performance Management, Time & Attendance/Payroll, Compensation, etc.) and development of a roadmap for future enhancements/upgrades for these functions.
- 3.5 Consultant will work closely with internal COSA stakeholders and third-party partners to realize the following Key Goals/Objectives, including but not limited to:
- Evaluating all Human Resources (HR) processes to gain process efficiencies and improve the user experience for all stakeholders (employee, manager, Finance, HR, IT, etc.)
 - Creating positive employee experiences
 - Reducing errors and improving accuracy
 - Ensuring efficient integration with internal stakeholders (Finance, IT, etc.) and current external vendors.
 - Improving response times
 - Enhancing visibility and control
 - Streamlining HR processes for all stakeholders (employee, manager, Finance, IT, etc.)
 - Reducing process friction
- 3.6 Consultant shall lead the design, development, and implementation of the SAP Success Factors-Employee Central solution, BenefitFocus Benefits, and SuccessFactors Learning Management following the SAP Activate Methodology. The existing systems and functionality will be replaced with sustainable, state-of-the-art SAP technology to manage (HR) services more efficiently, including but not limited to Core HR, Benefits and LMS.

Payroll and Time Management will remain in ECC and this scope includes the design and implementation of necessary near real time integrations to ensure data needed for payroll processing is available.

- 3.7 Consultant shall comply with all service and delivery timelines. A project schedule with delivery timelines will be established within 30 calendar days of the effective date of this Agreement.
- 3.8 Force Majeure. Should performance of any obligation created under this Agreement become illegal or impossible by reason of fire, flood, storm, epidemic, pandemic, or other national or regional emergency, act of God, governmental authority, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or any other cause not enumerated herein but which is beyond the reasonable control of the Party whose performance is affected, then such provision is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to remove the cause of force majeure.
- 3.9 Consultant shall discharge its duties under this Agreement as a prudent expert solely in the interests of the City with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Agreement and in a manner that avoids conflicts of interest and self-dealing.

ARTICLE IV **COMPENSATION**

- 4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director through the Acceptance Process, of all services and activities set forth in this Agreement, City agrees to pay Consultant's fees set forth in the SOW for the Services, plus any applicable taxes. All Consultant fees and charges are exclusive of all taxes. Each party will be responsible for its own income, employment, and property taxes as applicable. City will reimburse Consultant for any deficiency relating to taxes that are City's responsibility under the Agreement. The parties agree to cooperate with each other to help each party minimize any potential liability to the extent legally permissible and will provide to the other any tax exemptions or certifications reasonably requested.

- 4.2 Consultant may submit invoices to City on a monthly basis for deliverables accepted by the City through the Acceptance Process, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. 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, ITSD, P.O. Box 839966, San Antonio, Texas 78283-3966. Alternatively, invoices can be submitted electronically to accounts.payable@sanantonio.gov with a copy to itfiscaladmin@sanantonio.gov.
- 4.3 Unless otherwise documented in a mutually executed Amendment in accordance with hourly rates identified in **Attachment A**, Price Schedule, no additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby 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 cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.
- 4.4 Final acceptance of work products and services in accordance with the Acceptance Process requires written approval by City. The approving official shall be the Director. Final payment will be made to Consultant following written approval of the final work products and services by Director. 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.

ARTICLE V

OWNERSHIP OF DOCUMENTS

- 5.1 In accordance with Texas law, Consultant acknowledges and agrees that all Local Government Records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such Local Government Records produced by or on the behalf of City pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Consultant. Parties agree as between City and Consultant, Consultant is and will remain the sole and exclusive owner of all right, title, and interest in and to Consultant's Pre-existing Intellectual Property (IP) relating thereto, subject only to the authorization and license granted to City.
- 5.2 Excluding Consultant's Pre-existing IP, Consultant acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of City. Consultant will turn over to City all such records. Consultant shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

- 5.3 In accordance herewith, Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

ARTICLE 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 hereunder (hereafter referred to as “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 hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives. Any access to documents, systems or facilities under this Agreement will be subject to Consultant’s and its subcontractors’ reasonable process, access and security requirements, including a limit on the City’s right to conduct an audit to once per year, at its expense and with ten (10) business days’ prior notice.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “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 hereunder, 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 the documents to City at Consultant’s expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.
- 6.3 Consultant shall notify City, promptly, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.
- 6.4 Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Consultant acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Consultant agrees that the contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

- 6.5 By signing this Agreement, Consultant warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. City hereby relies on Consultant's certification, and if found to be false, City may terminate this Agreement for material breach.

ARTICLE 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 hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. For such terminations, the City will pay Consultant a pro-rated portion for Deliverables in progress for expenses incurred prior to the date of termination.
- 7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, either party may terminate this Agreement after thirty (30) days from the date provided in the notice, in part as provided in the Acceptance Process or in whole, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement.
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting; or
- 7.3.2 Any uncured material breach of the terms of this Agreement.
- 7.4 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 30 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 30-day cure period, City shall have the right, without further notice, to terminate this Agreement, in part as provided in the Acceptance Process or in whole as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIII. SBEDA;
- 7.4.2 Bankruptcy or selling substantially all of company's assets.
- 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
- 7.4.4 Performing unsatisfactorily
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, 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, (i) City will pay Consultant for all requested Services and Deliverables completed and accepted prior to the date of termination; and (ii) Consultant shall effect 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 thirty (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 by City.
- 7.7 Within forty-five (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 forty-five (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.
- 7.8 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.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

ARTICLE VIII
NOTICE

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 three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Finance Department

If intended for Consultant, to:

Accenture LLP
Attn: Robert Cohan

Attn: Troy Elliott, Deputy Chief Financial Officer
P.O. Box 839966
San Antonio, Texas 78283-3966

500 W Madison Street
Chicago, Illinois 60661

With copy to:

City of San Antonio
Information Technology Services Department
Attn: Craig Hopkins, Chief Information Officer
P.O. Box 839966
San Antonio, Texas 78238-3966

ARTICLE IX
INSURANCE

- 9.1 Consultant must provide a completed Certificate(s) of Insurance to City's Finance Department. The certificate must be:
- 9.1.1 clearly labeled with the name of this Agreement in the Description of Operations block;
 - 9.1.2 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); and
 - 9.1.3 properly endorsed and have the agent's signature, and phone number.
- 9.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- 9.3 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 this Agreement. Endorsements shall be provided on the applicable policies for additional insured, waiver of subrogation, primary and noncontributory.
- 9.4 The City's Risk Manager reserves the right to request modification to 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. Such modifications will only become effective after mutual written agreement of the parties.
- 9.5 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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. 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 Contractors*	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$2,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage shall be maintained and in effect for no less than two years subsequent to the completion of the professional service.
6. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage. Will be provided in the terms and conditions of Professional Liability.
*If applicable	

9.6 Consultant must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain appropriate insurance coverages and provide a certificate of insurance that names Consultant and City as additional insureds where applicable. Consultant shall provide City with subcontractor certificates before the subcontractor starts work.

9.7 If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to request relevant data from the policies where the City is named as an additional insured, declaration page and all endorsements. Consultant shall comply with such requests within 10 days by submitting the City at the following address:

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 9.8 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 for Commercial General Liability Insurance, Umbrella Liability Coverage and Business Automobile Liability policies 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 calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium, however for this requirement Consultant will provide the notice.
- 9.9 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.
- 9.10 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 withhold any new payment(s) which become due to Consultant under this Agreement until Consultant demonstrates compliance with requirements.
- 9.11 Nothing contained in this Agreement shall be construed as limiting the extent to which Consultant may be held responsible for payments of bodily injury damages to persons or real or tangible property damages resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 9.12 Consultant's Business Automobile insurance and Commercial General Liability 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.

- 9.13 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.
- 9.14 Consultant and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE X
INDEMNIFICATION AND LIMITATIONS ON LIABILITY

- 10.1 **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 arising out of, resulting from or related to (a) bodily injury, death and real and/or tangible personal property damage and made upon the City directly; (b) any breach, disclosure, or exposure of data or information of or regarding City that is provided to or obtained by Consultant in connection with the Agreement, including City data, confidential information of City, any personal identifying information, or any other protected or regulated data by Consultant, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Agreement; (c) tax liability, unemployment insurance or workers' compensation or expectations of benefits by Consultant, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Agreement; and (d) 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligent acts or omissions of City, its officers or employees. 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. In addition, Consultant agrees to indemnify, defend, and hold the City harmless from any third party claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied by Consultant.**
- 10.2 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 City in writing promptly 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 and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City 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.

- 10.3 Defense Counsel – THE DEFENSE SHALL BE COORDINATED BY CONSULTANT WITH CITY WHEN CITY IS A NAMED DEFENDANT IN ANY LAWSUIT AND CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE CITY ATTORNEY’S OFFICE IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY. If Consultant fails to retain Counsel, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all reasonable 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.
- 10.4 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 herein 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.
- 10.5 Limitations on Liability – In no event will either party be liable (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any: (i) punitive, special, or consequential damages, or (ii) loss of profits, revenue, business, opportunity or anticipated savings (“Exclusions”).

To the extent permitted by the Constitution and Laws of the State of Texas, the sole liability of either party to the other in relation to any and all claims in any manner related to this Agreement (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) will be for damages, not to exceed in the aggregate an amount of TWO AND ONE-HALF (2.5) times the total contract value in terms of fees to be paid by the City under this Agreement, including any amendment required as a result of such claims, any amendment which increases the total contract value, and renewals (the “Cap”). NOTHING IN THE AGREEMENT EXCLUDES OR LIMITS EITHER PARTY’S LIABILITY TO THE OTHER FOR: (I) FRAUD OR WILLFUL OR INTENTIONAL TORTS, INCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) DEATH OR BODILY INJURY, (III) VIOLATION OF STATE OR FEDERAL LAW INCLUDING BUT NOT LIMITED TO DISCLOSURES OF CONFIDENTIAL INFORMATION AND ANY PENALTY OF ANY KIND LAWFULLY ASSESSED AS A RESULT OF SUCH VIOLATION, EXCEPT THAT CONSULTANT’S INDEMNIFICATION OBLIGATIONS TO CITY FOR ANY BREACH RELATED TO ANY BREACH, DISCLOSURE, OR EXPOSURE OF DATA OR INFORMATION OF OR REGARDING CITY THAT IS PROVIDED TO OR OBTAINED BY CONSULTANT IN

CONNECTION WITH THE AGREEMENT, INCLUDING CITY DATA, CONFIDENTIAL INFORMATION OF CITY, ANY PERSONAL IDENTIFYING INFORMATION, OR ANY OTHER PROTECTED OR REGULATED DATA BY CONSULTANT, ITS EMPLOYEES, REPRESENTATIVES, AGENTS, OR SUBCONTRACTORS IN OR IN CONNECTION WITH THE EXECUTION OR PERFORMANCE OF THE AGREEMENT ARE SUBJECT TO THE CAP, (IV) VIOLATION OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING BUT NOT LIMITED TO PATENT, TRADE AND SERVICE MARKS, OR COPYRIGHT INFRINGEMENT IN OR IN CONNECTION WITH THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT, (V) BREACH IN CONFIDENTIAL INFORMATION (OTHER THAN CONSULTANT'S INDEMNIFICATION OBLIGATIONS TO CITY FOR A BREACH IN RESPECT OF PERSONAL DATA), (VI) INDEMNIFICATION OBLIGATIONS FOR INTELLECTUAL PROPERTY INFRINGEMENT, DEATH AND BODILY INJURIES, AND (VII) ANY OTHER LIABILITY WHICH CANNOT LAWFULLY BE EXCLUDED OR LIMITED.

Notwithstanding the foregoing, (1) all breaches in respect of personal data are subject to the Cap, and (2) the following categories of damages are hereby deemed to be damages for which Consultant's liability shall be unlimited: (a) data privacy breach investigation, (b) remediation, (c) data subject and/or regulatory authority notification, (d) data subject call center support for a period not to exceed twelve (12) months, (e) data subject credit monitoring for a period not to exceed twelve (12) months, and (f) regulatory fines levied by a governmental entity located in the United States, to the extent such damages were caused by a failure of Consultant or any of its employees or agents to implement or adhere to the Data Safeguards required by this Agreement.

ARTICLE XI

ASSIGNMENT AND SUBCONTRACTING

- 11.1 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.
- 11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Benefitfocus, Sistema Technologies and Silotech Group. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director in writing.
- 11.3 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 to terms Consultant deems appropriate and consistent with this Agreement. Performance by subcontractors under 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. Any

references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director.

- 11.4 Background Checks. Consultant is responsible for assessing risk and maintaining effective background check policy and procedures for all employees and subcontractors responsible for performing services under this Agreement, including those located outside of the United States. Contractor shall retain all employee records and maintain access to employee information of its subcontractors, including any criminal background checks, for the retention period stated in Article VI, Records Retention. In order to conduct periodic contract compliance reviews, City may request or review summaries of background check results at any time to the extent permitted by law. Contractor shall provide copies of the requested information, or access thereto in San Antonio, Texas, and shall obtain authorization for the disclosure from the employee at time of hire, to the extent required.

Consultant warrants and represents that (a) its background check policy and procedures for all United States employees at a minimum includes the following and (b) its subcontractors at minimum will have completed the following:

- Social Security Number (SSN) Trace and Validation: Consultant and its subcontractors validate an employee candidate's SSN and identify where the person has lived and worked in the past.
- Criminal Record Check: Consultant and its subcontractors complete a federal and county criminal check at hire. Consultant and its subcontractors do not conduct state criminal records searches at hire because some states do not have state-wide criminal records searches. Consultant agrees to do state criminal searches prior to staffing and ensure subcontractors complete state criminal searches prior to staffing this Agreement to the extent records are available. For all individuals working under this Agreement, Consultant shall ensure a National criminal background check was conducted on the employee, or subcontractor National criminal background check was conducted on the subcontractor's employee, within the last two (2) years.
- Widescreen Plus National Criminal Search: Consultant and its subcontractors shall utilize a secondary screening tool used to find additional potential criminal information.
- Global Sanctions & Enforcement Check (GSEC): Consultant and its subcontractors shall use GSEC to identify whether a candidate appears on one of thousands of global databases that identify individuals prohibited from certain activities.
- Education History: Consultant and its subcontractors shall confirm all post-high school education identified by employee candidates.
- Employment History: Consultant and its subcontractors shall confirm at least the last five (5) years of employment history identified by the employee candidate.

Background Checks for a Foreign National. Consultant agrees the additional, minimum background check policy and procedures listed below shall apply to Consultant's employees and subcontractors responsible for performing services under this Agreement

which are a “foreign national”, defined as a person or organization who is not a citizen of the United States and who is a citizen of a foreign country. This process is for creating and maintaining a “Non-City Employee Account” which is an express requirement for accessing City networks and systems for performing services under this Agreement, including accessing a City workstation or application to perform assigned duties.

- Consultant, or its designee, will collect and maintain background information about any foreign national (the “Applicant”), including education and criminal record histories, if applicable. Background check completed will have one or more of the following acceptable “authorities” for background checks:
 - Active US Department of Defense (DOD) security clearance.
 - Active US Government clearance issued by a Department or Agency of the US Federal government.
 - State of Texas active and valid background check or current security clearance issued by the State of Texas.
 - Consultant criminal background check conducted on the employee, or subcontractor criminal background check conducted on the subcontractor’s employee, within the last two (2) years must include a National criminal background check. For a non-US citizen living in US for less than six (6) months, Consultant will submit an International criminal background check and for a non-US citizen living in US more than six (6) months Consultant will submit a National and International criminal background check.
- Information collected on Applicant to complete the verification will be part of Applicant’s record with City.
- Refusal by Applicant to provide the required information will mean Applicant is not eligible to be considered for a Non-City Employee Account. City’s processing of information about Applicant for security purposes is based on City’s legitimate interest in protecting City systems and networks.
- Consultant and Applicant will be required to complete a form to provide:
 - Criminal background check letter or certification of information validated by Consultant (e.g., an attestation of successful completion of checks);
 - Last four (4) digits of the applicant’s Social Security Number (or equivalent of that Country (e.g., Citizens of India: AADHAR card number from India); and
 - Signature by Consultant and Applicant.
- Information and documentation in this section must be available upon request for a review or a security assessment as often as quarterly or as defined by the City’s Information Security Committee.

11.5 Except as otherwise stated herein, 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 consent of Director. 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 Consultant, assignee, transferee or subcontractor.

- 11.6 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.

ARTICLE XII

INDEPENDENT CONTRACTOR

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 “respondeat superior” shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto 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.

ARTICLE XIII

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 13.1 SBEDA Program. 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. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement 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 that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement 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.

13.2 Definitions.

- 13.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 13.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.
- 13.2.3 **Award** – the final selection of a Consultant for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 13.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Consultant’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.
- 13.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all

prospective respondents and subcontractors that are ready, willing, and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

- 13.2.6 **Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.
- 13.2.7 **City** – refers to the City of San Antonio, Texas.
- 13.2.8 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.
- 13.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the

business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

- 13.2.10 **Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.
- 13.2.11 **Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 13.2.12 **Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 13.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.
- 13.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.
- 13.2.15 **Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the

City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

- 13.2.16 **Good Faith Efforts** – documentation of the Consultant’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Consultant’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Consultant; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)
- 13.2.17 **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]
- 13.2.18 **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.
- 13.2.19 **Individual** – an adult person that is of legal majority age.

- 13.2.20 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale, and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- 13.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.
- 13.2.22 **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.
- 13.2.23 **M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.
- 13.2.24 **M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:
- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
 - (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

- 13.2.25 **M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.
- 13.2.26 **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).
- 13.2.27 **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:
- African-Americans: Persons with origins in any of the black racial groups of Africa.
- Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
- Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.
- 13.2.28 **Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

- 13.2.29 **Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.
- 13.2.30 **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- 13.2.31 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.
- 13.2.32 **Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 13.2.33 **Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).
- 13.2.34 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 13.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.
- 13.2.36 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- 13.2.37 **Responsive** – a firm’s submittal (bid, response, or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.
- 13.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity

(currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

- 13.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- 13.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.
- 13.2.41 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- 13.2.42 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- 13.2.43 **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- 13.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

- 13.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.
- 13.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.
- 13.2.47 **Suspension** – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.
- 13.2.48 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Consultant’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.
- 13.2.49 **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

13.3 SBEDA Program Compliance – General Provisions

As Consultant 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 Consultant’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. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

- 13.3.1 Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Consultant’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;
- 13.3.2 Consultant 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 Consultant or its Subcontractors or suppliers;
- 13.3.3 Consultant 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;
- 13.3.4 Consultant shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant’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 Consultant 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 Consultant 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.

- 13.3.5 Consultant 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.
- 13.3.6 Consultant 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.
- 13.3.7 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 Consultant's Subcontractor / Supplier Utilization Plan, the Consultant 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 Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- 13.3.8 Consultant acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Consultant for this project has registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and Consultant 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. For more information, please see link: <http://www.sanantonio.gov/SBO/Compliance>.
- 13.4 SBEDA Program Compliance as applicable – Affirmative Procurement Initiatives.
- 13.4.1 ESBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (c), this contract is being awarded pursuant to the ESBE Prime Contract Program, and as such, Consultant affirms that if it is presently certified as an ESBE (see *Emerging Small Business Enterprise* definition), Consultant agrees not to subcontract more than **49%** of the contract value to a non-ESBE firm.
- 13.4.2 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, Consultant 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.
- 13.4.3 M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Consultant agrees to subcontract or self-perform at least **five percent**

(5%) of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). If the Prime Consultant is a certified M/WBE firm, then the Consultant is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime Consultant does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

13.4.3 Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 6. (g), this contract is being awarded pursuant to Segmented M/WBE Goals. Consultant agrees to subcontract or self-perform at least **two percent (2%)** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This **two percent (2%)** subcontracting goal will also count toward the aforementioned **five percent (5%)** M/WBE subcontracting goal.

13.4.3 Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE and AABE community in its efforts to exercise good faith in achieving the M/WBE and AABE subcontracting goal(s) of 5% and 2% respectively, that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of August 2023, African-American owned firms represent approximately 3.87% of available subcontractors, Hispanic-American firms represent approximately 6.88%, Asian-American firms represent approximately 0.66%, Native American firms represent approximately 0.04%, and Women-owned firms represent approximately 3.21% of available Professional Services subcontractors.

13.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Consultant 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, Consultant 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. Consultant'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. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

- 13.6 Prompt Payment. Upon execution of this contract by Consultant, Consultant 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 Consultant's reported subcontract participation is accurate. Consultant 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 Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new City contracts shall be issued to the Consultant 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.
- 13.7 Violations, Sanctions and Penalties. In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:
- 13.7.1 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;
 - 13.7.2 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;
 - 13.7.3 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;
 - 13.7.4 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

13.7.5 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.

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:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance; and
4. 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).

ARTICLE XIV **AMENDMENTS**

14.1 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. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

14.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation, or law. The parties will work in good faith to execute a mutually agreeable amendment to document such changes, make the necessary adjustments to the parties' obligations hereunder and effectuate agreed upon changes.

ARTICLE XV
COMPLIANCE

- 15.1 Consultant and City shall perform as required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations as applicable to their respective businesses. Prior to providing Consultant any goods, software or technical data subject to export controls, City will provide written notice specifying the nature of the controls and any relevant export control classification numbers.
- 15.2 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.

ARTICLE XVI
CONSULTANT – SUPPLIED INTELLECTUAL PROPERTY

- 16.1 Consultant shall pay all royalties and licensing fees necessary for Consultant-supplied IP in performing its obligations under this Agreement. Consultant shall hold the City harmless and indemnify the City from third party claims of the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of such IP, including copyrights, patents, trademarks, trade secrets, used in the project. It shall defend all third-party suits for infringement of any such Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.
- 16.2 Upon receipt of notification that a third-party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property supplied by Consultant infringes upon any United States or International patent, copyright or trademark, Consultant will immediately:
- Either:
- 16.2.1 Obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be; or
- 16.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and
- 16.2.3 Reimburse the City for any expenses incurred by the City for such IP. At the City's expense, it may implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

16.3 Consultant further agrees, regarding Consultant-supplied IP, to:

- 16.3.1 Assume the defense of any third-party claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement;
- 16.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and
- 16.3.3 Indemnify the City for third-party claims resulting in any monetary damages and/or costs awarded in such suit;

Provided that:

- 16.3.4 Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City;
 - 16.3.5 The Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim;
 - 16.3.6 The liability claimed shall not have arisen out of the City's negligent act or omission or use of the IP or deliverable in breach of this Agreement or the unauthorized combination of the IP or deliverable with third-party products or services or the failure to use corrections or enhancements to the IP or Deliverable; and
 - 16.3.7 The City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.
- 16.4 Each party (or its licensors as applicable) shall retain ownership of its intellectual property rights, including without limitation patents, copyright, trade secrets and other proprietary rights ("IP") which were existing prior to each SOW, as well as its know-how and any IP developed, licensed or acquired by or on behalf of a party or its licensors independently from the Services or the Deliverables, in each case including any modifications, enhancements or derivatives (collectively "**Pre-Existing IP**"). City grants to Consultant (and its subcontractors), during the term of each SOW, a non-exclusive, fully paid, worldwide, non-transferable license to use City's Pre-Existing IP (and shall obtain the same license/consent as required from any third-party), solely for the purpose of providing the Services and Deliverables. Except for Pre-Existing IP and third-party materials in the Deliverables, all IP in the Deliverables is assigned to the City. City grants Consultant a non-exclusive, fully paid, sublicenseable, worldwide license to use the Deliverables (and no City Confidential Information may be shared or exposed to others) solely for the purpose of providing the Services and Deliverables under this Agreement. Consultant Pre-Existing IP embedded in Deliverables may not be used separately.
- 16.6 Consultant is not precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar

to, the Deliverables, provided they do not contain City Confidential Information. Certain Consultant assets (e.g., software, or platforms etc.), third-party intellectual property and open source software, may require additional terms, which are attached to this Agreement, where applicable.

ARTICLE XVII
NONWAIVER OF PERFORMANCE

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 herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

ARTICLE XVIII
LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XIX
LAW APPLICABLE & LEGAL FEES

19.1 **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.**

19.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between City and Consultant arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. 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.

- 19.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XX
LEGAL AUTHORITY

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 the terms, conditions, provisions and obligations herein contained.

ARTICLE XXI
PARTIES BOUND

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

ARTICLE XXII
CAPTIONS

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.

ARTICLE XXIII
CONFIDENTIAL INFORMATION

- 23.1 Consultant shall secure the confidentiality of records and information that Consultant may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting City's or its authorized representatives' right of access to records or other information under this Agreement.
- 23.2 No reports, information, project evaluation, project designs, data or other documentation developed by, given to, prepared by or assembled by Consultant under this contract shall be disclosed or made available to any individual or organization by Consultant without the prior written approval of the City.
- 23.3 If Consultant receives inquiries regarding documents within its possession pursuant to this contract, Consultant shall immediately forward such request to the City for disposition.
- 23.4 Each party may have access to information (in any form) that relates to the other party and its activities which is identified by the disclosing party as confidential or reasonably understood to be confidential ("Confidential Information"). The receiving party agrees that Confidential Information may only be used for the purposes set out in the Agreement and that it will protect Confidential Information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of

care. Confidential Information may only be disclosed to an employee, subcontractor or (with the consent of the other party) to a third-party if required for the purpose of the Agreement and provided such parties are bound by substantially similar obligations of confidentiality. Nothing in the Agreement will prohibit or limit either party's use of information (i) previously known to it without an obligation not to disclose such information, (ii) independently developed by or for it without use of Confidential Information, (iii) acquired by it from a third-party which was not, to the receiver's knowledge, under an obligation not to disclose such information, or (iv) which is or becomes publicly available through no breach of the Agreement. However, Consultant understands City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Consultant may not be considered confidential under Texas law, or pursuant to a Court order.

ARTICLE XXIV SEVERABILITY

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 hereto 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 herein; it is also the intention of the parties hereto 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.

ARTICLE XXV STATE PROHIBITIONS ON CONTRACTS

- 25.1 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.
- 25.2 "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.

25.3 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.

By executing this Agreement, Company 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 this contract for material breach.

25.4 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).

By executing this Agreement, Company 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.

25.5 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.

By executing this Agreement, Company 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.

ARTICLE XXVI
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 §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

ARTICLE XXVII
CONFLICT OF INTEREST

27.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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:

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

27.2 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 this Agreement. Consultant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XXVIII
EXECUTION IN COUNTERPART

This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

ARTICLE XXIX
AUTOPEN OR ELECTRONIC SIGNATURE

This Agreement and any amendments hereto may be signed by autopen or electronic signature (e.g., DocuSign or similar electronic signature technology) and may be transmitted by electronic means. Copies of this Agreement and any amendments hereto that are so executed and delivered have the same force and effect as if executed with handwritten signatures and physically delivered.

ARTICLE XXX
PROHIBITED CONTRIBUTIONS

- 30.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a “high-profile” discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor’s business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 30.2 Consultant acknowledges that the City has identified this Agreement as high profile.
- 30.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

ARTICLE XXXI
INCORPORATION OF ATTACHMENTS

Each of the attachments 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, with this document taking priority over all attachments:

- | | |
|-----------------------|---|
| Attachment A | Consultant’s Price Schedule submitted in response to Request for Proposals (RFP) for System Integration for SAP Success Factors (RFP 23-136; RFX 6100017340) (the “ Price Schedule ”). |
| Attachment B | Consultant’s Subcontractor/Supplier Utilization Plan submitted in response to RFP 23-136; RFX 6100017340 (the “ Utilization Plan ”) |
| Attachment C | Statement of Work (the “ SOW ”) |
| Attachment D | Consultant’s Proposal submitted in response to RFP 23-136; RFX 6100017340 (the “ Proposal ”) |
| Attachment D-1 | City's Request for Proposals for System Integration for SAP Success Factors 23-136; RFX 6100017340 (the “ RFP ”) |
| Attachment E | Accenture Software for HCM License and Maintenance Services Order Form. City’s direct use of Accenture Software for HCM is solely and exclusively governed by Attachment E, E-1 and E-2. |
| Attachment E-1 | Technical Support Policy for Accenture Software for HCM |
| Attachment E-2 | General Terms and Conditions for Accenture Software for HCM (“ GTC ”) |
| Attachment F-1 | City’s Current Security Standards: Administrative Directive (AD) 7.3a Data Security (which is currently under review and subject to amendment) |
| Attachment F-2 | City’s Current Security Standards: AD 7.4b Acceptable Use of Information Technology (which is currently under review and subject to amendment) |
| Attachment F-3 | City’s Current Security Standards: 7.8f Access Control (which is currently under review and subject to amendment) |
| Attachment G | Consultant’s Data Processing and Security Addendum |

ARTICLE XXXII
ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto 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 hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments.

THIS AGREEMENT, AND THE TERMS AND CONDITIONS INCLUDED HEREIN, IN NO WAY GUARANTEES CONSULTANT THE RIGHT TO OR EXPECTATION THAT CONSULTANT MAY RECEIVE THE SAME OR SIMILAR TERMS WITH RESPECT TO ANY FUTURE OR OTHER CONTRACT WITH THE CITY OF SAN ANTONIO.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

ACCENTURE LLP

(Signature)

Robert Cohan

(Signature)

Printed Name: _____

Printed Name: **Robert Cohan**

Title: _____

Title: **Managing Director**

Date: _____

Date: **August 20, 2024**

Approved as to Form:

Assistant City Attorney