

AN ORDINANCE

AUTHORIZING A CONTRACT WITH PROVIDENCE HOUSE BUSINESS SERVICES, LLC FOR A CRISIS NURSERY FEASIBILITY STUDY ASSESSMENT FOR A TOTAL COST OF \$94,205 THROUGH JULY 21, 2025, WITH AN OPTION TO EXTEND THROUGH AUGUST 21, 2025. FUNDING IS AVAILABLE FROM THE GENERAL FUND. [LORI HOUSTON, ASSISTANT CITY MANAGER; MELODY WOOSLEY, DEPARTMENT OF HUMAN SERVICES]

* * * * *

WHEREAS, the Department of Human Services (DHS) has had increasing interest in crisis nursery programs; and

WHEREAS, DHS issued a Request for Proposals for a “Crisis Nursery Feasibility Study” (RFP 24-182, 6100018524) on October 28, 2024, and the evaluation committee recommended Providence House Business Services, LLC as the highest ranking respondent on February 3, 2025; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The execution of a Professional Services Contract with Providence House Business Services, LLC for a Crisis Nursery Feasibility Study in the amount of \$94,205 through July 21, 2025, with an option to extend through August 21, 2025, is approved. A copy of the contract in substantially final form is attached and incorporated here for all purposes as **Attachment I**.

SECTION 2. Funding in the amount of \$94,205.00 for this ordinance is available in Fund 11001000, Cost Center 3801030101 and General Ledger 5201040 as part of the Fiscal Year 2025 Adopted Budget approved by City Council.

SECTION 3. Payment is authorized to Providence House Business Services, LLC and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


PASSED AND APPROVED this 20th day of March, 2025.

M A Y O R
Ron Nirenberg

ATTEST:

Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:


for _____
Andrew Segovia, City Attorney

ATTACHMENT I

Contract # _____

**PROFESSIONAL SERVICES CONTRACT
WITH
PROVIDENCE HOUSE BUSINESS SERVICES, LLC
FOR CRISIS NURSERY SERVICES**

This CONTRACT is made and entered into by and between the CITY OF SAN ANTONIO (“CITY”), a Texas municipal corporation, acting by and through its City Manager, pursuant to Ordinance No. 2025-_____ dated _____, and Providence House Business Services, LLC (“CONSULTANT”), both of which may be collectively referred to as the “Parties.”

The Parties agree to the mutual obligations contained in this CONTRACT and to the performance and accomplishment of its described tasks; NOW THEREFORE:

I. TERM

- 1.1 This CONTRACT shall commence upon execution and shall terminate on July 21, 2025, unless earlier termination shall occur pursuant to any provision hereof. At the City’s sole option, this CONTRACT may be extended for an additional one (1) month period, until August 21, 2025, so long as the total amount of the of the CONTRACT does not exceed the total amount set forth in section 3.1.

II. SCOPE OF SERVICES

- 2.1 The CONSULTANT agrees to provide all services in compliance with the attached Scope of Work (**Attachment A**) for ”Crisis Nursery” Services in a manner satisfactory to the Director of the Department of Human Services (“Director”). The determination made by Director shall be final, binding and conclusive on all Parties hereto. CITY shall have the right to terminate this CONTRACT, in whole or in part, in accordance with Article XIV, Termination, should CONSULTANT’s work not be satisfactory to Director; however, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should CITY elect not to terminate.

III. COMPENSATION TO CONSULTANT

- 3.1 In consideration of CONSULTANT’s performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this CONTRACT, CITY agrees to pay CONSULTANT a total amount not to exceed **\$94,205.00**, to be paid based on the deliverables and at the costs specified in Attachment A. CITY may revise the timeline per deliverable by written agreement so long as the total amount of this CONTRACT does not exceed the foregoing amount.
- 3.2 CONSULTANT shall submit invoices to CITY, in a form acceptable to CITY, based on the deliverables and timeline in Attachment A, which CITY shall pay within thirty (30) days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio,

Department of Human Services Finance, Accounts Payable, at Accounts.Payable@sanantonio.gov and rebecca.flores@sanantonio.gov.

- 3.3 The Parties hereby agree that all compensable expenses of CONSULTANT have been provided for in the total payment to CONSULTANT as specified in section 3.1 above. No additional fees or expenses of CONSULTANT shall be charged by CONSULTANT nor be payable by CITY, without prior approval and written agreement of the Parties.
- 3.4 Final payment due under the CONTRACT will not be paid until all the work, reports, data, documents and any other unfinished services necessary to complete performance under the CONTRACT have been received, performed and are approved by the CITY. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.
- 3.5 CITY shall not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 3.6 If this CONTRACT is partially or wholly grant funded, and reduced funds are awarded to the CITY, the budget for this CONTRACT may be adjusted to correspond to the actual award received by the CITY.

IV. INDEPENDENT CONTRACTOR

- 4.1 CONSULTANT understands and agrees that CONSULTANT is and shall be deemed to be an independent contractor, and not an officer, agent, servant or employee of CITY, and that CONSULTANT is responsible for the acts or omissions of its officers, agents, employees, contractors, subcontractors and consultants, and that the CITY shall in no way be responsible therefor. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties hereto. CONSULTANT understands and agrees 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 Contract and that the CONSULTANT has no authority to bind the CITY.

V. CONFIDENTIALITY

- 5.1 No reports, information, designs, data nor any 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 express prior written approval of CITY. In the event CONSULTANT receives a request to disclose or produce documents, CONSULTANT shall inform the CITY immediately for the purpose of receiving direction regarding the manner of processing.
- 5.2 CONSULTANT shall comply with laws, regulations and rules pertaining to confidentiality and shall establish a method to secure the confidentiality of documents and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local

laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.

VI. OWNERSHIP OF DOCUMENTS

- 6.1 Any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, CONSULTANT, and any related responses, inquiries, correspondence and materials which has come into CONSULTANT's custody, even if not produced by, or on behalf of, CONSULTANT, in whatsoever form and character (hereinafter referred to as "documents") pursuant to the provisions of this CONTRACT are the exclusive property of CITY; and no such documents shall be the subject of any copyright or proprietary claim by CONSULTANT.
- 6.2 CONSULTANT understands and acknowledges that as the exclusive owner of any and all such documents, CITY has the right to use all such documents as CITY desires, without restriction or further compensation to CONSULTANT. CONSULTANT shall deliver, at CONSULTANT's sole cost and expense, all CONTRACT related documents and reports to the CITY in accordance with the dates established under this CONTRACT, and in a timely and expeditious manner, and if a delivery date is not specified, then upon termination of the CONTRACT.
- 6.3 CONSULTANT shall notify CITY immediately of any requests for information from a third party which pertain to documents obtained and/or generated pursuant to this CONTRACT. CONSULTANT understands and agrees that CITY will process and handle all such requests.

VII. RIGHT OF REVIEW AND RECORDS RETENTION

- 7.1 CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all 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 CONTRACT 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.
- 7.2 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 CONTRACT. 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.

VIII. LICENSES AND CERTIFICATIONS

- 8.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide

said services and that CONSULTANT meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

IX. COMPLIANCE

- 9.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations. Failure to comply with applicable laws and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions. In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio and applicable grant rules and regulations, shall have the final authority to render or secure an interpretation.
- 9.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991.
- 9.3 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. Also, CONSULTANT certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing the foregoing laws.

X. CONFLICT OF INTEREST

- 10.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the City's Ethics Code, from having a financial interest in any CONTRACT with City. An officer or employee has a "prohibited financial interest" in a CONTRACT with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the CONTRACT or sale: a City officer or employee; his parent, child or spouse; an entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the entity, or ten (10) percent or more of the fair market value of the entity; an entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary entity.
- 10.2 CONSULTANT certifies, and this CONTRACT is made in reliance, that it, its officers, employees and agents performing on this CONTRACT are neither a City officer nor an employee as defined by Section 2-52 (e) of the City's Ethics Code. CONSULTANT further warrants and

certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XI. INSURANCE

11.1 AGENCY agrees to comply with the following insurance provisions:

- (A) No later than 30 days before the commencement of this Contract, AGENCY must provide a completed Certificate(s) of Insurance to City's Department of Human Services. The certificate must be:
- clearly labeled with the legal name of the event in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number,
- (B) Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by City's Department of Human Services. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- (C) If the City does not receive copies of insurance endorsement, then by executing this Contract, AGENCY certifies and represents that its endorsements do not materially alter or diminish the insurance coverage during the effective period of this Contract.
- (D) The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Contract based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- (E) AGENCY shall obtain and maintain in full force and effect for the duration of this Contract, at AGENCY'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.
- (F) If the AGENCY claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

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

d. Contractual Liability e. Independent Contractor**	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$250,000 per occurrence
5. Professional Liability – (Claims-made Coverage)	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service
** If applicable	

(G) AGENCY must require, by written contract, that all subcontractors providing goods or services under this Contract obtain the same insurance coverages required of AGENCY and provide a certificate of insurance and endorsement that names AGENCY and City as additional insureds. AGENCY shall provide City with subcontractor certificates and endorsements the subcontractor starts work.

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

City of San Antonio
Department of Human Services
Attn: Director
100 W. Houston Street, 9th Floor
San Antonio, Texas 78205

(I) AGENCY's insurance policies must contain or be endorsed to contain the following provisions:

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

- (J) Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, AGENCY shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend AGENCY's performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- (K) In addition to any other remedies City may have upon AGENCY's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order AGENCY to stop work and/or withhold any payment(s) which become due to AGENCY under this Contract until AGENCY demonstrates compliance with requirements.
- (L) Nothing contained in this Contract shall be construed as limiting the extent to which AGENCY may be held responsible for payments of damages to persons or property resulting from AGENCY's or its subcontractors' performance of the work covered under this Contract.
- (M) AGENCY's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Contract.
- (N) The insurance required is in addition to and separate from any other obligation contained in this Contract and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- (O) AGENCY and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XII. INDEMNITY

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

ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 12.2 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 within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT 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.
- 12.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 12.4 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.

XIII. NON-DISCRIMINATION

- 13.1 As a condition of entering into this CONTRACT, CONSULTANT represents and warrants that it will not unlawfully discriminate in the solicitation, selection, hiring or treatment of subcontractors, vendors, suppliers, or customers, nor shall CONSULTANT retaliate against any person for reporting instances of such discrimination. CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities.

XIV. TERMINATION

- 14.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 14.2 **TERMINATION BY NOTICE:** The CONTRACT may be terminated by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) days from the date such notice is received by the other party. If the notice

does not specify a date of termination, the effective date of termination shall be thirty (30) days after receipt of the notice by the other party. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination.

- 14.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the non-defaulting party shall deliver to the defaulting party written notice thereof specifying the matters of default. The defaulting party shall have ten (10) days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, the non-defaulting party may elect to terminate this CONTRACT, in whole or in part, upon written notice, as of the date provided in the notice.
- 14.4 **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, and the CONTRACT may not be continued by severance of the prohibited duties, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 14.5 **NON-APPROPRIATION:** In the event that through action or no action initiated by the City of San Antonio, the CITY's legislative body does not appropriate funds for the continuation of this CONTRACT and has no funds to do so from other sources, this CONTRACT may be terminated. To effect this termination, the CITY shall, thirty (30) days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.
- 14.6 **EFFECT OF TERMINATION:** Upon the effective date of expiration or termination of this CONTRACT CONSULTANT shall cease all operations of work being performed by CONSULTANT or any of its approved subcontractors pursuant to this CONTRACT. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and documents and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate, if so requested by CITY; otherwise, the documents shall be retained by CONSULTANT in accordance with Article VII, Right of Review and Records Retention. Any records or documents transfer shall be completed within fifteen (15) days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.
- 14.7 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination. Failure by CONSULTANT to submit its claims within said thirty (30) 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 funds that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this CONTRACT.
- 14.8 Upon termination of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY.

- 14.9 Termination not sole remedy. In no event shall CITY's action of terminating this CONTRACT, 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.

XV. AMENDMENT

- 15.1 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the Parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the date hereof, so long as the total amount of the of the CONTRACT does not exceed the total amount set forth in section 3.1.
- 15.2 It is understood and agreed by the Parties, that changes in local, state and federal rules, regulations or laws applicable to this CONTRACT, may occur during the term of this CONTRACT and that any such changes will be automatically incorporated into this CONTRACT without written amendment, as of the effective date of the rule, regulation or law.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient, if in writing, and to have been duly given if and when delivered personally, with receipt acknowledged, or upon receipt if sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

CITY

Department of Human Services
Attn: DHS Director
100 W. Houston Street, 9th Floor
San Antonio, Texas 78205
rebecca.flores@sanantonio.gov

CONSULTANT

Providence House Business Services, LLC
Attn: Natalie A. Leek, President & CEO
2050 W. 32nd Street
Cleveland, OH 44113
natalie@provhhouse.org

XVII. TEXAS GOVERNMENT CODE PROHIBITIONS

- 17.1 Prohibition on contracts with companies boycotting Israel. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods/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.

"Company", for the purposes of this Article, means a for-profit sole proprietorship, 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.

- 17.2 Prohibition on contracts with companies that discriminate against firearm and ammunitions 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": means, with respect to the entity or association, to:

- (1) 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;
- (2) 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
- (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

- 17.3 Prohibition on contracts with companies that boycott energy companies. Texas Government Code §2274 provides that a governmental entity may not enter 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;

"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).

- 17.4 Prohibition on Contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations. 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 CONTRACT for material

- 17.5 By executing contract documents with the City, CONSULTANT hereby certifies that it does not and will not engage in any of the prohibitions in this Article during the term of the

CONTRACT. City hereby relies on CONSULTANT's certification(s). If found to be false, City may terminate the CONTRACT for material breach.

XVIII. LEGAL AUTHORITY

- 18.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

XIX. SUBCONTRACTING AND ASSIGNING INTEREST

- 19.1 CONSULTANT shall perform all necessary work or shall supply qualified personnel as maybe necessary to complete the work to be performed under this CONTRACT. CONSULTANT shall obtain prior written approval from CITY before assigning or subcontracting any responsibilities under this CONTRACT. The violation of this provision by CONSULTANT shall not release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.
- 19.2 Any services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this CONTRACT. Compliance by subcontractors with this CONTRACT 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.

XX. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY

- 20.1 The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement and in **Attachment C** 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.

XXI. SUCCESSORS AND ASSIGNS

- 21.1 This CONTRACT shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

XXII. NON-WAIVER

- 22.1 Unless otherwise specifically provided for in this CONTRACT, a waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this CONTRACT 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. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this CONTRACT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. 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.

XXIII. VENUE AND GOVERNING LAW

- 23.1 ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**

XXIV. SEVERABILITY

- 24.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future laws during the term of this CONTRACT, including any extension, it is the intention of the Parties hereto that the remainder of the CONTRACT shall not be affected thereby, and that in lieu of each clause or provision of the CONTRACT that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the CONTRACT.

Signature page follows

XXV. ENTIRE AGREEMENT

25.1 Each of the Attachments listed below is an essential part of the CONTRACT, which governs the rights and duties of the Parties. This CONTRACT, together with its authorizing ordinance, exhibits and attachments, if any, embodies the final and entire agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the matters of this CONTRACT shall be deemed to exist or to bind the Parties unless same be executed in accordance with Section XV.

EXECUTED as of the date of the last party to sign below.

CITY

**City of San Antonio, Texas
Department of Human Services**

Melody Woosley, Director

Date


CONSULTANT

**Providence House Business
Services, LLC**

Natalie A. Leek, President & CEO

Date

APPROVED AS TO FORM:



Assistant City Attorney

ATTACHMENTS

Attachment A – Scope of Work

Attachment B – HIPAA BAA

Attachment C – Small Business Economic Development Advocacy (SBEDA) Program

ATTACHMENT A – Scope of Work

Month	Work Completed	Percentage (of the total amount)	Invoice Date and Amount
March & April	<ul style="list-style-type: none"> • Identify and invite potential Feasibility Study Steering Committee members • Host kickoff Steering Committee meeting • Identify stakeholder constituency types and individual prospects for interviews and meetings • Develop the scheduling framework for stakeholder and focus group meetings • Begin stakeholder outreach, determine attendees, and begin scheduling stakeholder and focus group meetings via preferred engagement method(s) - virtual or in-person • Research and reserve central meeting locations and transportation resources for meetings in San Antonio • Identify and contract local interpreter services 	30%	April 30 \$30,000

cont'd next page

March & April	<ul style="list-style-type: none"> • Analyze crisis nursery models viable for San Antonio including risk assessments for each approach • Begin asset mapping San Antonio community to identify potential locations, operators, transit access, and concentrated populations in need of services 		
May & June	<ul style="list-style-type: none"> • Continue virtual stakeholder meetings • Facilitate site visits and in-person focus groups/stakeholder meetings <ul style="list-style-type: none"> ◦ Incl. travel, accommodations, meeting room rental, interpreter • Continue review of crisis nursery models viable for San Antonio including sustainability strategies • Continue asset mapping San Antonio community to identify potential locations, operators, transit access, and concentrated populations in need of services 	35%	June 30 \$35,000

cont'd next page

July & August	<ul style="list-style-type: none"> • Finalize research of crisis nursery models, risk mitigation, and sustainability plans • Finalize stakeholder outreach • Synthesize all collected data on models, risk, sustainability, asset mapping and stakeholder/focus group responses • Host Steering Committee meeting to share key findings • Begin implementation plan development • Finalize crisis nursery model recommendations and implementation plan development • Create RFP framework for The City of San Antonio for potential implementation and vendor/operator selection • Presentation of the final feasibility analysis, proposed implementation plan, and RFP framework to the Steering Committee <ul style="list-style-type: none"> ○ Incl. travel, accommodations, meeting room rental 	35%	July 31 \$29,205
--------------------------	--	-----	---------------------

ATTACHMENT B

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (**Agreement**) is entered into by and between the City of San Antonio (“**Covered Entity**”), and the named Party in the underlying Agreement, a **Business Associate** (“**BA**”), (collectively, the “**Parties**”).

WHEREAS, the Covered Entity and BA have entered into an Agreement (“Service Contract”), effective on execution, whereby BA provides crisis nursery services to the Covered Entity through no later than August 21, 2025; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

- (1) “Breach” shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:
 - (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
 - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;
 - (c) whether the protected health information was actually acquired or viewed; and
 - (d) the extent to which the risk to the protected health information has been mitigated.

- (2) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. 164.501.
- (3) “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
- (4) “Health Information” is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- (5) “Individual” means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- (6) “Individually Identifiable Health Information” is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (7) “Privacy Rule” shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
- (8) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes “Electronic Protected Health Information” or “EPHI” and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.
- (9) “Required By Law” means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 45 C.F.R 164.103.

- (10) “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (11) “Security Rules” shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.
- (12) The Health Information Technology for Economic and Clinical Health (“HITECH”) Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
 - (a) does business, and
 - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;
- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all Security Rules requirements;
- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of

any instances of which it is aware in which the confidentiality of the information has been breached.

- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI;
- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) This Agreement becomes effective on the date specified herein. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

- (3) Effect of Termination.
- (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.
- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.
- I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE CONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

- N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

EXECUTED by the Parties, signing by and through their authorized representatives, to be effective upon execution of the underlying agreement.

COVERED ENTITY:

City of San Antonio,
a Texas municipal corporation

By: _____
Melody Woosley, Director
Department of Human Services

BUSINESS ASSOCIATE:

Providence House Business Services, LLC

By: _____
Natalie A. Leek, President & CEO

ATTACHMENT C

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

Crisis Nursery Feasibility Study Exhibit 1

A. 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.

B. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

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

In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain this SBE, M/WBE and AABE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain a subcontracting goal for SBE, M/WBE and AABE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

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 community. 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, African-American owned firms represent approximately 2.45% of available subcontractors, Hispanic-American firms represent approximately 8.52%, Asian-American firms represent approximately 0.65%, Native American firms represent approximately 0.14%, and Women-owned firms represent approximately 4.21% of available **Professional Services** subcontractors.

C. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

Waiver Request - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Subcontracting Goal- Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Waiver request must fully document Subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which Subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.** More information on the good faith effort criteria is available within the Subcontracting Goal – Waiver Request Evaluation Criteria at <http://www.sanantonio.gov/SBO/Forms.aspx>.

Exception Request - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the

basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum 7of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

For more information please see link: <http://www.sanantonio.gov/SBO/Compliance>

E. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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
4. Refusal to accept a response or proposal
5. 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).

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of

the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

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

H. Definitions

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.

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 degree of 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.

Award – the final selection of a Respondent 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 distinguished from contract payments, the first, only reflect the anticipated dollar amounts the second, reflect actual dollar amounts that are paid to a contractor under an awarded contract).

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 Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

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.

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 certification 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 the Ordinance No. 2016-05-19-0367 Section III.E.6.

City – refers to the City of San Antonio, Texas.

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.

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.

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.

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.

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.

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.

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.

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.

Good Faith Efforts – documentation of the Respondent'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 Respondent'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 Respondent; 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.)

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).]

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.

Individual – an adult that is of legal majority age.

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.”

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 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.

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.

M/WBE Directory – a listing of M/WBEs that have been certified for participation in the City's M/WBE Program APIs.

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.

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.

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).

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.

Originating Department – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

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).

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.

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.

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”).

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.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

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.

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.

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).

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.

SBE Directory – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.

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.

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.

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 SBEDA Program.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

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.

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.

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.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR'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 CONTRACTOR'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.

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.