

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ECOSYSTEM MAPPING SERVICES**

STATE OF TEXAS           §  
                                      §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation acting by and through its City Manager or his designee, pursuant to City Ordinance No. \_\_\_\_\_, passed and approved the 12<sup>th</sup> day of December 2023, and EcoMap Technologies (“Consultant”) a corporation organized and existing under the laws of Maryland both of which may be referred to as the ‘Party’ or collectively as the “Parties.”

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

**I. DEFINITIONS**

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

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

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement under Article VII Termination, the term of this Agreement shall be for a period of three (3) years and shall commence upon execution by all Parties.

**III. SCOPE OF SERVICES**

3.1 Consultant agrees to provide the services described in this Article III, entitled “Scope of Services” in exchange for the compensation described in Article IV, entitled “Compensation.” The services to be provided by Consultant shall be performed in a professional manner in accordance and consistent with the scopes of work, work plans and costs described by City and proposed by Consultant in the following documents:

- A. Exhibit A. Scope of Services
- B. Exhibit B. Proposal
- C. Exhibit D. SBEDA Ordinance Compliance Provisions
- D. Exhibit E. Master Services Agreement
- E. Exhibit F. EcoBot Terms of Use

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

Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, should City elect not to terminate.

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant Thirty-Nine Thousand Three Hundred Seventy-Five Dollars and No Cents (\$39,375.00) annually, for a total not to exceed One Hundred Eighteen Thousand One Hundred Twenty-Five Dollars and No Cents (\$118,125.00), upon receipt of a valid and complete invoice in accordance with pricing estimates contained in Exhibit B. Proposal. Consultant acknowledges that such fixed fee shall be sufficient for full and final compensation for all services to be performed pursuant to or associated with the Scope of Services, to include any subscriptions or licenses required thereunder.

4.2 Invoices shall be submitted to: City of San Antonio, Accounts Payable, [accounts.payable@sanantonio.gov](mailto:accounts.payable@sanantonio.gov), with a copy to City of San Antonio Economic Development Department, [Caitlin.Cowart@sanantonio.gov](mailto:Caitlin.Cowart@sanantonio.gov) or designee. City shall pay such invoices by telegraphic bank transfer net of all duties and bank charges to an account specified by Consultant.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The Parties agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant for the original contract term cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, subject to Article XV. Amendments.

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

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

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

#### **V. OWNERSHIP, INTELLECTUAL PROPERTY AND DATA REQUIREMENTS**

5.1 Consultant agrees to abide by the following regarding intellectual property rights:

Consultant shall pay all royalties and licensing fees. Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses, or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials, and methods used in the performance of services. It shall defend all suits for infringement of any Intellectual Property rights.

Further, if Consultant has reason to believe that the design, service, process, or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third-party claim that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately:

Either:

Obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or, alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

Consultant further agrees to:

assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Contract,

assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

the Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim,

the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

**5.2 Ownership and Licenses.** In accordance with Texas law, Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Consultant pursuant to the resulting contract shall be the subject of any copyright or proprietary claim by Consultant.

The term "local government record" as used in this document means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is

open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Consultant acknowledges and agrees that all local government records, as described in this document, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Consultant, if awarded a contract, will be required to turn over to City, all such records as required by said contract. Consultant, if awarded a contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

Consultant, if selected, agrees to comply with all applicable federal, state, and local laws, rules, and regulations governing documents and ownership, access, and retention.

5.3 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Consultant acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Consultant agrees that the contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

Consultant warrants and certifies, and this contract is entered into in reliance thereon, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous RFP or contract. City hereby relies on Consultant's certification, and if found to be false, City may reject the proposal or terminate the Contract for material breach.

5.4 City Data. Consultant agrees to comply with the City's Data Governance Administrative Directive 7.12 and Data Security Administrative Directive 7.3a in the same manner required of City employees, interns, volunteers, and trainees, for City Data arising out of, resulting from, or related to Consultant's activities under such contract. As between City and Consultant, City is and will remain the sole and exclusive owner of all right, title, and interest in and to all City Data, including all intellectual property rights relating thereto, subject only to any limited license expressly granted to Consultant, and Consultant is and will remain the sole and exclusive owner of all right, title, and interest in and to the Consultant materials, including all intellectual property rights relating thereto, subject only to the authorization and license granted to City.

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

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

## **VI. RECORDS RETENTION**

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

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

6.3 Consultant shall notify City immediately in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

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

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Consultant against Consultant’s future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

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

7.4.2 Performing unsatisfactorily.

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

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

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

7.7 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

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

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

## VIII. NOTICE

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

If intended for City, to:

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

If intended for Consultant, to:

EcoMap Technologies, Inc.  
Kevin Carter  
306 W. Franklin St., Suite 102  
Baltimore, MD 21201

## **IX. NONDISCRIMINATION**

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

## **X. INSURANCE**

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

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

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

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

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

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

<u>TYPE</u>	<u>AMOUNTS</u>
*1. Workers' Compensation *2. Employers' Liability	Statutory \$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 d. Contractual Liability *e. Independent Consultants	For Bodily Injury and Property Damage of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
*4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$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.  *Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
*6. Cyber Liability	\$500,000 per claim \$500,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
*If Applicable	

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

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

City of San Antonio  
Economic Development Department



100 W. Houston St., Ste. 1800  
San Antonio, TX 78205

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

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

10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT'S performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

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

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

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

## **XI. INDEMNIFICATION**

11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and

nature, including but not limited to, personal or bodily injury, death, property damage and intellectual property right infringement, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this AGREEMENT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

11.3 CONSULTANT shall advise the CITY in writing within 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 AGREEMENT.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

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

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

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

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

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

### **XIII. INDEPENDENT CONTRACTOR**

13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

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

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

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

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

## **XV. SBEDA PROGRAM**

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

## **XVI. AMENDMENTS**

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant and subject to City Council approval as evidenced by passage of an ordinance. Notwithstanding the foregoing, the City Manager or his/her designee may execute amendments that do not relate to City’s funding under this Agreement without further action by City Council.

## **XVII. SEVERABILITY**

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

## **XVIII. STANDARD OF SERVICES**

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

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

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

19.1 This Article only applies to a contract that:

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

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

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

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

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

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

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

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

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

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

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

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

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

or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

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

## **XX. NONWAIVER OF PERFORMANCE**

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

## **XXI. LAW APPLICABLE**

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

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

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

## **XXII. LEGAL AUTHORITY**

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

## **XXIII. PARTIES BOUND**

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

## **XXIV. CAPTIONS**

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

## **XXV. INCORPORATION OF EXHIBITS**

25.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties. In the event of a conflict between the terms and conditions included in the body of this Agreement and the terms included in any of the attachments hereto, the descending order of precedence shall be (1) this Agreement, and (2) the order as appears below:

- Exhibit A. Scope of Services
- Exhibit B. Consultant Proposal
- Exhibit C. SBEDA Ordinance Compliance Provisions
- Exhibit D. Master Services Agreement
- Exhibit E. EcoBot Terms of Use

## **XXVI. ENTIRE AGREEMENT**

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

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

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

**CITY OF SAN ANTONIO**

**ECOMAP TECHNOLOGIES**



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Name: Erik Walsh  
Title: City Manager

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Name: Sherrod Davis  
Title: CEO

12/01/2023

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Date

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Date

Approved as to Form:

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Assistant City Attorney



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

The Scope of Services includes the development of an Ecosystem Mapping Tool that will enhance coordination and collaboration among service providers, stakeholders and organizations as well as bring together small businesses, capital and service providers, funders, and other stakeholders to coordinate/advocate for ecosystem matters. It will also increase access to resources and promote economic growth and support San Antonio small businesses and entrepreneurs. The four key pathways of focus include microenterprises, main street development, innovation, and second-stage companies.

### **I. Project Implementation**

Contractor shall use Asana for project management. EDD and Launch SA leads will be provided with a project account. The project team will meet bi-weekly with additional meetings provided, as needed by the City.

- a. Development of an Ecosystem Platform and Data Package and maintenance of the following:
  - i. Full, white-labeled configuration of the platform to include compilation of a data set of resources and organizations, keywords, lists, guides and website features to include a homepage, about section and navigator and user directory.
  - ii. Development of administrative pages to include data management, analytics and configuration.
  - iii. 1,000 assets split between resource providers and resources.
- b. EcoBot Implementation and Embeds
  - i. Contractor will include the initial configuration, training, and data curation of the EcoBot; this also includes a dedicated Customer Experience Manager.
  - ii. Embedded EcoBot functionality on multiple sites which includes access to the admin insights panel for multiple partners.
  - iii. EcoBot will answer specific data from the ecosystem, responds professionally and rejects inappropriate requests and should be easy-to-use.
- c. Dynamic Web Translation
  - i. Multilingual access to the EcoMap platform. Contractor will partner with a dynamic website translation service that ensures the platform data is translated and all subsequent data additional/transformations are updated in real time.
- d. Workforce Portal
  - i. Contractor will create a two-sided marketplace to connect talented people with relevant opportunities within San Antonio. It will be used to post full-time, part-time jobs, internships, fellowships, and apprenticeships. When users sign up, they can identify as “looking for opportunities.”
- e. Basic User Engagement Support
  - i. Access to template engagement library that includes resources for City-led outreach:
    - 1. Social media posts, flyers and handouts.
    - 2. Launch emails to pre-existing user email lists and bulk user uploads
    - 3. Configurable user onboarding emails
    - 4. Configurable re-engagement emails
    - 5. Access to four (4) hours of live marketing education training from the Contractor engagement team.
- f. Templated Custom Landing Page
  - i. Select a template from EcoMap library and customize to fit the branding guidelines of the City.

- g. Custom Landing Page – Annual
  - i. Annual maintenance/hosting fee and ten (10) EcoMap Engineering hours for the custom landing page.
- h. Custom Integrations (CRM)
  - i. Contractor will integrate the City’s existing customer relationship management (CRM) software such as Salesforce. Each year of the contract the City will receive thirty (30) engineering hours from contractor dedicated to CRM integration, updates, or maintenance.
- i. EcoMap Implementation
  - i. Contractor will include initial configuration, training, data curation, and a dedicated Customer Experience Manager.
- j. Assessment of Local Economic Landscape
  - i. Contractor will create an Ecosystem Breakdown data insights page, tailoring it to the keywords and categories that the City prioritizes.
- k. Launch Marketing
  - i. Contractor will include the following resources under the Bronze level support that includes a pre-launch landing page with custom launch collateral that will be reviewed and approved by the City in writing prior to any public release.
  - ii. Social media calendar with custom-designed social media content and digital flyers
  - iii. Pre-launch email drip campaign
  - iv. Pre-launch ad campaign valued at one thousand dollars and no cents (\$1,000.00)
  - v. Contractor will include a custom launch video and a custom training video.

## **II. Accessibility Requirements and Brand Standards**

The City of San Antonio embraces the principles of Trust, Quality, and Inclusion (including access, usability, and usefulness to the resident and employee) through Human-Centered Design (HCD) and data-informed decisions. Contractors who develop, deliver, and/or modify City digital assets and channels must meet a fundamental requirement that all information and communications technology (“ICT”) is accessible to, and usable by, people with disabilities. This meets City obligations under the Americans with Disabilities Act (ADA) of 1990 (as amended 2008) and the Rehabilitation Act of 1973, sections 503 and 508. Under Section 508 of the Rehabilitation Act, the City must provide employees and members of the public with disabilities comparable access to ICT as people who do not have disabilities.

Contractor must adhere to the following standards for ICT set forth in Section 508 of the Rehabilitation Act and in the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, when applicable based on this Scope of Work. These standards are minimum requirements and Contractor is expected to deliver access at higher levels when technically feasible. In addition to these minimum requirements and as part of Contractor’s effort to ensure access for individuals with disabilities, Contractor shall:

1. Create baselining efforts with accessibility by providing a Voluntary Product Accessibility Template (VPAT).
2. Implement proposed remediation solutions with the City’s project manager and City’s ADA Coordinator.
3. Define and agree to mutually agreed sprint capacity.
4. Develop or configure, test, stage, and release accessibility updates by applying iterative processes utilizing accessibility methodology and a frequent release cycle. This may include various testing stages incorporating testers with various types of disabilities (physical, sensory, cognitive, etc.).
5. Provide accessibility deliverables on the dates specified. Any changes to the delivery date must have prior approval (in writing) by City’s project manager and City’s ADA Coordinator or designate.

6. Submit all deliverables, in a format approved by the City's project manager, for City's review. City may specify a number of working days from the date of receipt for which its review will be complete.
7. Contact City's Project Manager and City's ADA Coordinator, in writing and with a reason for the delay with a revised schedule proposed, if a deliverable cannot be provided within the scheduled timeframe. The revised schedule proposed by Contractor shall also include the impact on related tasks and the overall project. The revised schedule must be reviewed and approved by City's project manager and City's ADA Coordinator before placed in effect. Other terms and conditions in this Agreement may dictate remedies, costs, and other actions based on the facts related to the delay, revised schedule, and impact on related tasks and overall project.
8. Ensure content and coding updates implemented throughout the term of this Agreement maintain compliance with accessibility requirements. If accessibility requirements are not maintained, a remediation solution and mutually defined and agreed sprint capacity will be developed with City's project manager and City's ADA Coordinator for performance by Contractor, at no additional cost to City. Such remediation shall be completed by Contractor before expiration of this Agreement.

Contractors who develop, deliver, and/or modify City digital assets and channels must also adhere to the City of San Antonio brand standards as outlined on [SA.gov/Brand](http://SA.gov/Brand). Applicability of these standards will be determined by this Scope of Work and based on the type of digital asset or channel. Adherence to the standards is essential for conveying a consistent and unified message about the City to a range of audiences in various mediums, helps to create a professional and recognizable appearance that builds trust and recognition with residents and employees, and ensures that the City of San Antonio is represented in a consistent and cohesive way that reflects positively on our community and organization.

### **III. Timeline:**

Contractor shall develop and launch the platform in approximately 12 weeks. Should any delays be anticipated, Contractor shall request an extension in writing detailing the reason for the delay, which must be accepted by the City in writing.

Process	When	Deliverable
Kickoff Call & Review of Ecosystem	Week 1	Data Paradigm & Design Guidelines
Compilation of Data & Data Assets	Weeks 2 - 8	Draft Dataset
Customization of EcoMap Platform	Weeks 2 - 8	Beta Platform
Data Review & Polishing	Weeks 8 - 12	Final Dataset
Platform Testing & Improvements	Weeks 8 - 12	Final Platform

**Exhibit B. PROPOSAL**  
**(See Separate Attachment)**

**Exhibit C.**  
**SMALL BUSINESS ECONOMIC DEVELOPMENT**  
**ADVOCACY (SBEDA) PROGRAM**  
**San Antonio Entrepreneurship Ecosystem Mapping**  
**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. 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.

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

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

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 for the month of April 2023, 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 of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

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 1/16<sup>th</sup> 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 (SAMSAs), 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.

## **Exhibit D. Master Services Agreement**



## MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Agreement**”), passed and approved by the City of San Antonio City Council pursuant to Ordinance No. \_\_\_\_-\_\_\_\_-\_\_\_\_\_, is entered into as of the Effective Date by and between **EcoMap Technologies, Inc.**, a Delaware corporation with principal place of business at 306 W. Franklin St. Baltimore, MD 21201, USA (“**EcoMap**”), and the legal entity, including its Affiliates, identified in the applicable Order (collectively “**Customer**”). EcoMap and Customer may be referred to together herein as the “**Parties**” or individually herein as a “**Party**.” **IF YOU SIGN UP FOR A SUBSCRIPTION BY SIGNING AN ORDER, YOU AGREE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE FOLLOWING AGREEMENT TERMS.**

Capitalized terms not otherwise defined, have the meanings set forth in Section 13.

### 1. SUBSCRIPTION SERVICES

1.1. Provision of Subscription Services. EcoMap shall make the Subscription Services available to Customer pursuant to this Agreement and the applicable Order Forms during each Subscription Term, subject to Customer’s timely payment of all applicable fees. EcoMap may provide the Subscription Services and host the Technology and Website on its own infrastructure or using a third party cloud computing services provider. Customer’s purchases of Subscription Services are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by EcoMap regarding future functionality or features. EcoMap may, in its sole discretion, modify, enhance and/or expand the Subscription Services at no additional cost to Customer. EcoMap may also modify, enhance or expand the Subscription Services by providing additional features or functionality, which may, but are not required to be, added by Customer to this Agreement at additional cost. Such additional cost features and functionality may be added by mutual written agreement of the Parties. EcoMap reserves the right to serve Ads on the Website(s) provided the express approval of the Customer.

1.2. Subscriptions. Unless otherwise specified in the applicable Order Form, (a) Subscription Services are purchased by packages of Data Assets subscriptions, (b) additional Data Assets subscriptions and features may be purchased during the Subscription Term by signing an additional Order Form and paying the additional fees for such additional Data Assets subscriptions, prorated for the portion of that Subscription Term remaining at the time the Subscriptions are added and (c) the added Data Asset subscriptions shall terminate on the same date as the underlying subscriptions. The Subscription Services are subject to any usage limits that are specified in the Order Forms.

1.3. License Grant. Subject to Customer’s compliance with all of the terms and conditions of this Agreement, EcoMap hereby grants Customer a limited, revocable, non-exclusive, non-transferable right during the Term of this Agreement to access/use the Technology and the Website(s), solely in connection with Customer’s use of the Subscription Services under this Agreement.

1.4. Compliance. Customer shall maintain books and records sufficient to permit EcoMap or an independent auditor retained by EcoMap to verify Customer’s compliance with the terms and requirements of this Agreement. During the term of

this Agreement and for a period of one (1) year following its termination or expiration, EcoMap has the right to audit Customer’s use of the Subscription Services to verify compliance with this Agreement. Any such audit will be performed with reasonable advance written notice to Customer, during Customer’s normal business hours and in a manner not disruptive to Customer’s operations. In the event that any audit reveals any non-compliance, including but not limited to underpayment of fees, Customer shall promptly cure the non-compliance, pay EcoMap any shortfall (at EcoMap’s then current list price). This Section 1.4 does not limit any other rights and remedies that EcoMap may have.

### 2. GENERAL RESTRICTIONS AND LIMITATIONS ON SUBSCRIPTION SERVICES

2.1. EcoMap Responsibilities. As part of the Subscription Services, EcoMap will (a) provide Customer with EcoMap’s standard support for the Subscription Services at no additional charge, and/or upgraded support if purchased for an additional fee, and (b) use commercially reasonable efforts to make the Subscription Services available 24 hours a day, 7 days a week, except for any unavailability caused by circumstances beyond EcoMap’s reasonable control, including, for example, an act of God, act of government, national emergency, pandemic, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving EcoMap’s employees), Internet service provider failure or delay, failure or delay of service from any third party cloud computing services provider, or denial of service attack. EcoMap will provide support services and service level commitments in accordance with its standard policies, as in effect from time-to-time, which are available at EcoMap’s web-site and will be provided on request. EcoMap reserves the right to modify its maintenance and support services documentation from time-to-time and, other than immaterial changes and corrections, will give Customer reasonable notice of modifications thereto.

2.2. Customer Responsibilities. Customer shall (a) be responsible for Authorized Users’ compliance with this Agreement, (b) exercise reasonable efforts to ensure the reasonable accuracy, quality, integrity, and legality of Customer Data and of the means by which Customer acquired Customer Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Services, and notify EcoMap promptly of any such unauthorized access or use, (d) use the Subscription Services only in accordance with the Documentation and applicable laws and government

regulations, and (e) provide EcoMap with assistance, information and materials that are reasonably requested as necessary to effectively provide the Subscription Services. Prior to launching any Website, each Party will adopt and implement a privacy policy that complies with all applicable laws, and it will maintain that policy in compliance with applicable laws throughout the term of this Agreement.

2.3. Restrictions. Customer will not, directly or indirectly, do any of the following: (a) make any backend Subscription Services or Professional Services available to anyone other than Customer or its Authorized Users; (b) sell, resell, license, sublicense, distribute, rent or lease any Subscription Service, or include any Subscription Services in a service bureau or outsourcing offering; (c) use the Subscription Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Subscription Services to store or transmit code, files, scripts, agents or programs intended to do harm (including, for example, viruses, worms, time bombs and Trojan horses); (e) interfere with or disrupt the integrity or performance of any Subscription Services or third-party data contained therein; (f) attempt to gain unauthorized access to any Subscription Services or the Technology; (g) permit direct or indirect access to or use of any Subscription Services or Technology in a way that circumvents a contractual usage limit, (h) copy any part, feature, function or user interface of the Subscription Services; (i) access any Subscription Services or Technology in order to build a competitive product or service; or (j) reverse engineer, disassemble or decompile any portion of the Technology.

2.4. Customer Data. The Subscription Services can be used to access and process Customer Data and End User Data in order to generate reports, analyses, documents, and/or results. If Customer chooses to save such output, it will be saved as Customer Data in Customer's account. Upon any termination, EcoMap will make all Customer Data and End User Data available to Customer for electronic retrieval for a period of sixty (60) days, but thereafter EcoMap may, but is not obligated to, delete stored Customer Data. EcoMap will not access Customer Data or End User Data except in accordance with (a) the licenses granted to EcoMap in Section 7.3 (Customer Data; License); or (b) Section 6.4 (Compelled Disclosure).

2.5. Security. EcoMap has implemented industry standard technical and organizational measures designed to secure the Subscription Services and Customer Data from accidental loss and unauthorized access, use, alteration or disclosure; however, EcoMap cannot guarantee that unauthorized third-parties will never be able to defeat those measures to gain access to the Subscription Services. Notwithstanding the foregoing, each party shall take, and hereby represents that it has taken, all steps to ensure the reliability and security of its systems; and that it will comply with their respective systems, network and data security policies.

### 3. PROFESSIONAL SERVICES

3.1. Professional Services. The Parties may, but are under no obligation to, enter one or more Order Forms for Professional Services to be performed by EcoMap. No Professional Services shall be furnished to Customer by

virtue of this Agreement alone, but shall require the execution of an Order Form by both Parties.

3.2. Scope Modifications. Customer may at any time request a modification to the Professional Services to be performed pursuant to any particular Order Form by making a written request to EcoMap specifying the desired modifications. EcoMap shall submit an estimate of the cost for such modifications pursuant to the Order Form. Modifications to any Order Form shall become effective only when a written change request is executed by authorized representatives of both Parties.

3.3. EcoMap Personnel. EcoMap shall be responsible for securing, managing, scheduling, coordinating and supervising EcoMap personnel, including its subcontractors, performing the Professional Services. EcoMap will designate an EcoMap project manager who will be responsible for coordinating EcoMap's provision of Professional Services under such Order Form. EcoMap shall have the right to remove or replace any personnel providing Professional Services with similarly skilled personnel. EcoMap shall provide reasonable notice to Customer of any change in personnel providing Professional Services. EcoMap may, in its sole discretion, subcontract or delegate any work under any Order Form to any third party without Customer's prior written consent, provided that, EcoMap shall remain responsible for the performance, acts and omissions of any such subcontractors. Customer may request that EcoMap remove or replace EcoMap personnel if Customer believes, in Customer's reasonable discretion, that such personnel's involvement is inappropriate, unsafe or detrimental to the delivery of the Professional Services. In the event such a request is made, any project timelines shall automatically extend by the amount of time required to replace said personnel and assimilate them into the project.

3.4. Cooperation. Customer shall perform its obligations as set forth in the applicable Order Form as well as the following obligations: (a) designate and provide one Customer project manager who will be responsible for coordinating the Customer obligations under a Order Form; (b) provide sufficient, qualified, knowledgeable personnel capable of: (i) performing Customer obligations set forth in each Order Form; (ii) making timely decisions necessary to move the Professional Services forward; and (iii) participating in the project and assisting EcoMap in rendering the Professional Services; and (c) in the case of on-site Professional Services, provide EcoMap with reasonable access to Customer's facilities during Customer's normal business hours and otherwise as reasonably requested by EcoMap, including such working space as EcoMap may reasonably request. Customer acknowledges and agrees that the performance by Customer of its obligations is material to EcoMap's ability to commence, proceed with and complete the Professional Services. In the event Customer does not perform Customer obligations in a timely manner, EcoMap may take any action as set forth in the applicable Order Form, or terminate the applicable Order Form in accordance with this Agreement.

3.5. Website Configuration. If Website configuration services are contracted under Professional Services, EcoMap will provide Customer with the following: (a) a pre-designed, configurable design master for each Website; (b) hosting and managing Customer's Website(s); (c) hosting the registered Internet domain(s)

for Customer Website(s) (the “Domain Name”); (d) linkage to and use of searchable Data Assets, as further set forth in Section 7.5. EcoMap shall private-label the Website with Customer’s Marks, for which purpose Customer hereby (i) grants to EcoMap a non-exclusive, non-sublicensable, non-transferable right and license to configure Customer’s branding elements in the Website including displaying Customer’s Marks solely as part of the private labeling of the Website; and (b) agrees to conform to EcoMap’s private label and white label guidelines that EcoMap may issue from time-to-time, including, without limitation use of the “*Powered by EcoMap*” designation in the Website.

3.6. No Solicitation. Each Party agrees that during the term of this Agreement, and for a period of one (1) year after the termination or expiration of this Agreement, it shall not offer employment or engagement (whether as an employee, independent contractor or consultant) to any employee or consultant of the other Party without the prior written consent of the other Party. Neither Party shall be in breach of this Section 3.6 if it can show by written records that there was no solicitation of employment or engagement (whether as an employee, independent contractor or consultant) and the person hired or engaged responded to a job posting or general advertisement (for example, through online job postings) that was publicly available and placed in connection with an open position.

#### 4. FEES AND PAYMENTS

4.1. Fees. Customer agrees to pay EcoMap the fees and other amounts set forth on all applicable Order Forms. Except as otherwise specified in an Order Form, (a) fees for Subscription Services are based on Subscription Services purchased and not actual usage, (b) payment obligations are non-cancellable and fees paid are non-refundable except as provided in Section 11.5 (Termination for Breach), and (c) quantities purchased cannot be decreased during the relevant Subscription Term. Except as otherwise specified in an Order Form, fees for any and all Professional Services shall be based on then-current hourly rates.

4.2. Payment Terms. Unless otherwise specified in the applicable Order Form, all undisputed fees and other amounts due under this Agreement shall be due payable net thirty (30) calendar days after date of receipt by Customer of the applicable invoice.

4.3. Taxes. Customer will, within thirty (30) days of the Effective Date of this Agreement, provide EcoMap with applicable sales tax exemption certificate(s). Unless the applicable tax-exempt certificate is provided, Customer shall be responsible for, all taxes, duties, and assessments imposed on Customer in connection with fees paid under the provisions of this Agreement, including without limitation, all sales, use, excise or other taxes and duties, and EcoMap will include all such taxes, duties and assessments on each applicable invoice.

4.4. Intentionally omitted.

4.5. Customer Information. Customer will provide complete and accurate billing and contact information to EcoMap and promptly notify EcoMap of any changes to such information.

4.6. Disputed Charges. Customer must notify

EcoMap in writing of any dispute or disagreement with invoiced charges within thirty (30) calendar days after the date of receipt of the applicable invoice by Customer.

4.7. Suspension. If any amount owing by Customer under this Agreement is thirty (30) or more days past due, EcoMap may, without limiting its other rights and remedies, suspend the Subscription Services and/or Professional Services to Customer until such amounts are paid in full. EcoMap will give Customer at least ten (10) days’ prior notice that Customer’s account is overdue before implementing any such suspension.

#### 5. CHANGE ORDERS AND DATA PROTOCOLS

5.1. Change Orders. Customer may, at any time, request changes to their platform. EcoMap reserves the right to issue a new Order Form for such changes that are outside of the scope of this agreement or the Order Form.

5.2. Data Protocols. EcoMap collects, maintains, and updates data according to the parameters set forth in the associated Order Form. EcoMap shall not monitor, in part or full, any data entries not initially collected by the EcoMap team. On a monthly basis, EcoMap will review Data Assets to identify unlinked and defunct Data Assets to be removed from the platform. EcoMap shall remove an entry from the Platform and/or the Dataset if so directed by Customer; EcoMap reserves the right to maintain all Entries within the Database associated with this project.

#### 6. CONFIDENTIAL INFORMATION

6.1. Access. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain Confidential Information of the other Party or Confidential Information of third parties that the disclosing Party is required to maintain as confidential.

6.2. Mutual Obligations. Except as may be expressly set forth in this Agreement, each Party that receives Confidential Information of the other Party agrees during the term of this Agreement and thereafter, to: (a) use the

Confidential Information only for the purposes of performing this Agreement; (b) hold the Confidential Information of the other Party in confidence and restrict it from dissemination to, and use by, any third party; (c) protect the confidentiality of the other Party’s Confidential Information using the same degree of care, but no less than reasonable degree of care, as the receiving Party uses to protect its own Confidential Information; (d) not create any derivative work from Confidential Information of the other Party; and (e) restrict access to the Confidential Information of the other Party to such of its personnel, subcontractors, and/or consultants who have a need to have access to such Confidential Information, who have been advised of the confidential nature of such information, and who have agreed in writing to terms no less protective than the terms set forth in this Agreement with respect to the treatment of such Confidential Information.

6.3. Confidentiality Exceptions. Section 6.2 shall not apply to Confidential Information that is: (a) publicly available or in the public domain at the time disclosed; (b) publicly available, becomes publicly available or enters the public domain through no fault of the recipient; (c) rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect

thereto; (d) already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) independently developed by the recipient without use of or reference to the disclosing Party's Confidential Information and by employees or other authorized agents of the receiving Party who have not been exposed to the disclosing Party's Confidential Information; or (f) approved for release or disclosure in writing by the disclosing Party.

6.4. **Compelled Disclosure.** Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party to the limited extent required to: (a) comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall, to the extent allowed by law, first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (b) establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

6.5. **Equitable Relief.** The Parties acknowledge and agree that money damages would not be a sufficient remedy for breaches of this Section 6 and that each Party may seek injunctive relief, specific performance, or other equitable relief as a remedy for any such breach.

## **7. INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS**

7.1. **EcoMap Rights.** As between the Parties, EcoMap and its licensors own all rights, titles and interests, including all IP Rights, in and to all EcoMap Confidential Information, the Data Assets, the Aggregated Data, the Technology and the EcoMap Software, including, without limitation, all modifications, improvements, upgrades, derivative works, and feedback related thereto, and any third party software provided by EcoMap, and all software, associated documentation, hardware, materials, information, processes or subject matter that is proprietary to EcoMap and is provided under this Agreement. EcoMap expressly reserves all rights not expressly granted to Customer under this Agreement and all executed Order Forms. Customer shall not knowingly engage in any act or omission that would impair the IP Rights of EcoMap or its licensors. In no event shall Customer obtain any ownership rights in or to the Confidential Information of EcoMap, the EcoMap Software or any IP Rights of EcoMap.

7.2. **Customer Rights.** Customer and its licensors own all right, title and interest, including all IP Rights, in and to Customer Marks, the Customer Data and all Confidential Information disclosed by Customer. EcoMap shall not knowingly engage in any act or omission that would impair Customer's IP Rights or Confidential Information. In no event shall EcoMap obtain any ownership rights in or to the Confidential Information of Customer, the Customer Data or Customer's IP Rights.

7.3. **Customer Data; License.** As between EcoMap and Customer, Customer exclusively owns all rights, title, and interest in and to all of the Customer Data. Customer hereby grants EcoMap a worldwide, limited-term license to host, copy, transmit and display Customer Data, as

necessary for EcoMap to provide the Subscription Services in accordance with this Agreement. Subject

to the limited licenses granted herein, EcoMap acquires no right, title or interest from

Customer under this Agreement in or to Customer Data. Customer hereby grants to EcoMap a perpetual, non-exclusive, royalty-free license to (a) use Customer Data in order to provide, monitor and improve the Subscription Services to Customer and (b) use all of Customer Data that is anonymous and does not personally identify Customer, or an Authorized User or visitor to the Website for statistical, analytical and other aggregate use.

7.4. **Content; License.** Customer represents and warrants to EcoMap that it has taken reasonable measures to own all right, title and interest in, or otherwise have full and sufficient authority to use in the manner contemplated by this Agreement, any content furnished by Customer to EcoMap for incorporation into the Website or the Subscription Services, including without limitation Customer's Marks. Customer hereby grants EcoMap a limited, non-exclusive, royalty-free license to use such content in the manner contemplated by this Agreement and the applicable Order Form.

7.5. **Data Assets; License.** As between EcoMap and Customer, EcoMap owns all rights, title, and interest in and to all of the compiled Data Assets. EcoMap hereby grants Customer a worldwide, limited, royalty-free license to transmit and display Data Assets, as part of Customer's use of the Subscription Services and Website in accordance with this Agreement. Subject to the limited license granted herein, Customer acquires no right, title or interest from EcoMap under this Agreement in or to Data Assets, except as expressly provided in Section 11.10. EcoMap shall be solely responsible for obtaining a sufficient license from Authenticated Users in order to grant Customer a license to End User Data as set forth in this Section 7.5. Without limiting the generality of the foregoing or anything else herein, all rights, title, and interest in and to all of the End User Data shall belong to and be owned by the Authenticated User who provided and uploaded such End User Data.

7.6. **Aggregated Data.** Customer acknowledges that EcoMap will use the Aggregated Data for any and all purposes in its discretion, including, without limitation, the development and improvement of products and services, provided that EcoMap will disclose such Aggregated Data solely in aggregate or other de-identified form (and not susceptible to be re-identified) in connection with its business, and further provided that it will not disclose Customer's Confidential Information.

7.7. **Suggestions.** Customer hereby grants EcoMap a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Subscription Services and/or Technology any suggestions, enhancement requests, recommendations, correction or other feedback provided by Customer, including Authorized Users, relating to the functionality and/or operation of the Subscription Services and/or Technology.

7.7. **Work Product; License.** Unless otherwise specified in the applicable Order Form, all Work Product created under this Agreement, including all IP Rights related thereto, shall be owned by EcoMap. All Work Product created under this Agreement that is owned by EcoMap is made available to Customer to enable Customer's use of the Website and Subscription Services pursuant to the

terms of this Agreement. EcoMap hereby grants Customer a worldwide, non-exclusive, transferrable, sublicensable, royalty-free license to use the Work Product, solely in connection with Customer's use of the Website and Subscription Services. Unless otherwise specified in the applicable Order Form, to the extent Customer acquires any rights in the Work Product, Customer hereby assigns such rights to EcoMap. Customer shall give EcoMap all reasonable assistance and execute all documents necessary to assist or enable EcoMap to perfect, preserve, register and/or record such assignment and EcoMap's rights in any Work Product.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1. General. Each Party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement, and that the execution and performance of this Agreement does not and shall not violate any other contract, obligation, or instrument to which it is a party, or which is binding upon it, including any confidentiality obligations.

8.2. Subscription Services Warranties. EcoMap warrants that: (a) the Subscription Services shall perform materially in accordance with the Documentation and (b) subject to Section 8.3 (Third-Party Applications), the functionality of the Subscription Services will not be materially decreased during a Subscription Term. For any breach of either such warranty, Customer's exclusive remedy shall be as provided in Section 11.5 (Termination for Breach). Customer acknowledges that availability of the Subscription Services depends upon the availability of the Internet and any third-party cloud computing services provider and that EcoMap has no control over such availability. Accordingly, EcoMap makes no representations, warranties, or covenants regarding the availability of the Subscription Services to the extent that such availability depends upon the availability of the Internet or any third-party cloud computing services provider.

8.3. Third Party Applications. The Subscription Services have been built as a software-as-a-service on a cloud-computing platform. The Subscription Services are designed to work with the cloud-computing platform and with certain other Third-Party Applications. Customer's use of Third-Party Applications is governed entirely by the terms of Customer's agreement with the relevant third party. Nothing in this Agreement creates any rights or obligations on the part of EcoMap with respect to such Third-Party Applications nor should this Agreement be construed as creating any rights or obligations on the part of any third party providing Third-Party Applications with respect to the Subscription Services provided by EcoMap.

8.4. Professional Services Warranty; Exclusive Remedy. EcoMap warrants the Professional Services performed hereunder will be performed in a professional and workmanlike manner, using sound principles, accepted industry practices and competent personnel ("**Professional Services Warranty**"). The Professional Services Warranty shall not apply if the Work Product is implemented, customized, modified, enhanced or altered by Customer or any third party that is not specifically retained by EcoMap as a contractor for such purposes. Customer's sole and exclusive remedy, and EcoMap's sole obligation, in the event of a breach of the

Professional Services Warranty is for EcoMap, at its expense, to re-perform the Professional Services which were not as warranted, provided EcoMap has received notice from Customer within thirty (30) calendar days of the completion of the Professional Services that Customer alleges were not performed consistent with the Professional Services Warranty. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THIS SECTION 8.4 SETS FORTH ECOMAP'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE PROFESSIONAL SERVICES WARRANTY.

8.5. Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, ECOMAP MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ECOMAP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. NO WARRANTY IS MADE BY ECOMAP ON THE BASIS OF TRADE USAGE OR COURSE OF DEALING. ECOMAP DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES, TECHNOLOGY, WEBSITE OR ANY OTHER INFORMATION, MATERIALS, DATA ASSETS, OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

## **9. LIMITATIONS OF LIABILITY**

9.1. EXCEPT FOR DAMAGES ARISING OUT OF (I) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) A PARTY'S MISAPPROPRIATION OF THE OTHER PARTY'S IP

RIGHTS, OR (iii) WHERE A CLAIM RESULTS FROM INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, OR COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, EVEN IF THE PARTY FROM WHOM SUCH DAMAGES ARE SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED.

9.2. EXCEPT FOR DAMAGES ARISING OUT OF (I) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) A PARTY'S MISAPPROPRIATION OF THE OTHER PARTY'S IP RIGHTS, OR (iii) WHERE A CLAIM RESULTS FROM INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, EACH PARTY'S TOTAL

AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO ECOMAP UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY BEFORE ANY EVENT GIVING RISE TO A CLAIM BY THE OTHER PARTY HEREUNDER. EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR DEMANDS IN EXCESS OF THIS LIMITATION.

9.3. Essential Basis. The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

## 10. INDEMNIFICATION

### 10.1. Infringement Claim.

10.1.1. EcoMap shall indemnify, defend and hold harmless Customer from and against all losses, liabilities, damages, claims, costs and reasonable expenses (including reasonable attorneys' fees) arising out of or related to a third party claim that Customer's use of, or access to, the EcoMap Software or Technology infringes a United States copyright or trademark or misappropriates any third party trade secrets (an "**Infringement Claim**"); provided that, Customer must give EcoMap: (a) prompt written notice of such claim; (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as EcoMap may reasonably request, at EcoMap's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, EcoMap shall not, without the prior written consent of Customer, settle any third-party claim against Customer unless (i) such settlement completely and forever releases Customer with respect thereto or (ii) does not involve any financial obligation on the part of Customer. In any action for which EcoMap provides defense on behalf of Customer, Customer may participate in such defense at its own expense by counsel of its choice.

10.1.2. Upon the occurrence of any Infringement Claim for which indemnity is or may be due under Section 10.1.1, or in the event that EcoMap believes that such a claim is likely, (EcoMap will, at its option: (a) appropriately modify the Subscription Services, EcoMap Software or Technology to be non-infringing, or substitute functionally equivalent software or services; (b) obtain a license to the applicable third-party intellectual property rights; or (c) if the remedies set forth in clauses (a) and (b) above are not commercially feasible, as determined by EcoMap in its sole discretion, EcoMap may terminate this Agreement on written notice to Customer and refund any pre-paid fees for services that have not been provided. THE PROVISIONS OF THIS SECTION 10.1 STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF ECOMAP TO CUSTOMER, AND IS CUSTOMER'S SOLE REMEDY, WITH RESPECT TO ANY INFRINGEMENT CLAIM.

10.2. Intentionally Omitted.

## 11. TERM AND TERMINATION

11.1. Agreement. This Agreement shall become effective upon the Effective Date hereof, and shall continue in effect until it is earlier terminated in accordance with this Section 11.

11.2. Term of Purchased Subscriptions. Each Subscription Term shall be as specified in the applicable Order Form.

11.3. Term of Order Form. Unless otherwise stated in the applicable Order Form, the term of each Order Form shall last until performance thereunder is completed.

11.4. Termination on Expiration of Subscription Terms and Order Forms. Upon expiration or termination of any and all Subscription Terms and Order Forms executed under Agreement, either Party may terminate this Agreement by giving not less than thirty (30) days written notice to the other Party.

11.5. Termination for Breach. Either Party may terminate this Agreement, or any Order Form executed under this Agreement, in the event of a material breach by the other Party. Such termination may be affected only through a written notice to the breaching Party; specifically identifying the breach on which such notice of termination is based. The breaching Party will have a right to cure such breach within sixty (60) calendar days of receipt of such notice (ten (10) calendar days in the case of non-payment). The non-breaching Party may terminate this Agreement, or any Order Form or Order Form executed under this Agreement, in the event that such cure is not made within such a sixty (60)-day period (or ten (10)-day period in the case of non-payment). In the event the breach is caused by EcoMap, Customer shall be reimbursed any amount paid for Professional Services or Subscription Services, prorated per month such services have not been provided due to breach (including the cure period if services were not performed during such period) and termination for breach.

11.6. Bankruptcy. This Agreement, or any Order Form executed under this Agreement, may be terminated immediately by a Party through written notice if the other Party ceases to carry on business as a going concern, becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets.

11.7. Termination of Individual Order Forms. In the event a Party terminates any individual Order Form in accordance with Sections 11.5 or 11.6, this Agreement (including any other Order Forms) shall remain in full force and effect in accordance with its terms.

11.8. Accrued Obligations. Termination of this Agreement and/or any particular Order Form shall not release either Party from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement and/or any applicable Order Form to survive termination.

11.9. Cumulative Remedies. Termination of this Agreement and/or any applicable Order Form, regardless



of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.

11.10. Effect of Termination. Upon any termination of this Agreement, Customer shall immediately discontinue all use of the Subscription Services and promptly pay to EcoMap all amounts due and payable under this Agreement. In addition, each Party shall: (a) immediately discontinue all use of the other Party's Confidential Information; (b) at the option of the disclosing Party, either return or destroy all Confidential Information of the disclosing Party in its possession; and (c) delete the disclosing Party's Confidential Information from its computer storage or any other media, except for archival copies which may be retained and shall be destroyed in accordance with the party's Record retention policy. Any such retained copies shall remain subject to Section 6 (Confidentiality). Each Party will, on request from the disclosing Party, provide the disclosing Party with a written certification of compliance with this Section 11.10 signed by an officer. Upon termination, and mutual agreement of the Parties (including price), Customer may continue to use Data Assets updated as of the effective date of termination of this Agreement solely in connection with the Website. EcoMap shall provide all purchased Data Assets in .csv file format.

11.11. Survival of Obligations. The provisions of Sections 1.4, 3.6, 6, 7, 8.5, 9, 10, 11.8 thru 11.11, 12 and 13, as well as Customer's obligations to pay any amounts due and outstanding hereunder, shall survive termination or expiration of this Agreement.

## 12. MISCELLANEOUS

12.1. Intentionally omitted.

12.2. Order of Precedence. In the event of a conflict between this Agreement and any Order Form that is executed by both Parties, the Order Form shall govern, except to the extent that this Agreement expressly states the intent of the Parties to supersede or change one or more provisions in the Order Form.

12.3. Export Compliance. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Subscription Services. Without limiting the foregoing, (a) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports and (b) Customer shall not permit Authorized Users to access or use the Subscription Services in violation of any U.S. export embargo, prohibition, or restriction.

12.4. Force Majeure. Either Party shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of such Party. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

12.5. Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by registered mail, return receipt requested; or (c) sent

overnight using an overnight air courier. Notices will be considered to have been given at the time of actual delivery if delivered in person, three (3) business days after posting if sent by mail, or one (1) day after delivery to an overnight air courier service. All such notices shall be sent to each Party at its address specified on the signature page of the applicable Order, or addressed to such other address as that Party may have given by written notice in accordance with this provision.

12.6. Assignment. Neither Party shall assign its obligations under this Agreement without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation shall be null, void and of no effect. Notwithstanding the foregoing, either Party may assign this Agreement, without requiring such prior consent, in connection with a merger or sale of all or substantially all of its assets, provided that the assignee agrees in writing to assume the assignor's obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of EcoMap and Customer and their successors and permitted assigns.

12.7. Customer Attribution; Marketing. Each Party may use and display the other Party's name and success stories in its marketing materials. In addition, the Technology may include product attribution in a form similar to a hyperlink "**Powered by EcoMap**". Upon Customer's prior written approval, EcoMap may issue a press release announcing Customer's selection of EcoMap's product and services and/or Customer's successful deployment of the EcoMap products and services. Customer may have an authorized Customer representative provide a quote for these press releases. EcoMap may refer to Customer in its marketing and promotional materials, verbally and/or in writing, provided Customer has provided its approval prior to publication thereof.

12.8. Independent Contractors. The Parties are acting as independent contractors in making and performing this Agreement. The relationship arising from this Agreement does not constitute or create any partnership, joint venture, employment relationship or franchise between the Parties.

12.9. No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

12.10. Entire Agreement. This Agreement (together with all Order Forms and the Professional Services Agreement) sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof. No changes in or additions to this Agreement will be recognized unless incorporated herein by written amendment and signed by duly authorized representatives of both Parties. This Agreement and the Professional Services Agreement shall apply and supersede any pre-printed, additional or boilerplate terms and conditions of any form submitted by either Party. The

waiver by either Party of a breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof will not affect the remainder of this Agreement, which will remain in full force and effect and enforceable in accordance with its terms. Headings in this Agreement shall not be used to interpret or construe its provisions.

### 13. DEFINITIONS.

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. *“Control,”* for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Ads”** means the online and digital third-party advertising served in the Website.

**“Admin”** means the person(s) designated by the Customer to access the backend of the platform in order to make changes, observations or analyses as the Customer sees fit.

**“Aggregated Data”** means, collectively, all statistical, analytical and other aggregated data collected, analyzed, and compiled by EcoMap as part of its provision of the Services, and any information related to the use, provision of, monitoring and performance of the Subscription Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom) but solely in an anonymous, aggregated and de-identified manner.

**“Authorized User”** means Customer’s Admin, employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder. All Authorized Users must be parties to this Agreement and warrant that Access Credentials will not be shared in any way with third parties that are not subject to this Agreement.

**“Authenticated Users”** third party users who have created a profile by entering authentication information during the signup process to have End User Data populated into the database comprising the Subscription Services.

**“Confidential Information”** means any material, data or information relating to a Party’s software, inventions, processes, formulas, technologies, designs, drawings, research, development, products, product plans, services, customers, customer lists, member lists, member contact information, Customer programs, resource information, markets, marketing plans, financial statements, or other business information, trade secrets or intellectual property that such disclosing Party treats as proprietary or confidential, and is marked as “confidential” or “proprietary” or that, given the circumstances, should be reasonably apparent that such information is of a confidential or proprietary nature. Without limiting the foregoing, (i) the EcoMap Software and all IP Rights associated therewith shall constitute Confidential Information of EcoMap, (ii) Customer Data shall

constitute Confidential Information of Customer; (iii) all software and any databases (including any data models, structures, non-Customer specific data and Customer specific data and aggregated statistical data contained therein) disclosed by a Party shall constitute Confidential Information of the disclosing Party, and (iv) all End User data shall constitute Confidential Information of the Authenticated User.

**“Customer”** has the meaning set forth in the first paragraph of this Agreement and includes the subsidiaries, chapters and non-independent Affiliates.

**“Customer Data”** means any data, regardless of whether in printed or electronic form, that is (i) provided to EcoMap by Customer in order for EcoMap to perform its obligations under this Agreement, (ii) provided to EcoMap by Authorized Users, or (iii) derived from Customer’s use of the Subscription Services.

**“Data Assets”** means the data sets sourced, identified, extracted, compiled, mapped, populated, and analyzed by EcoMap in the course of performing services hereunder and to which access is provided under Subscription Services.

**“Documentation”** means the technical documentation provided by EcoMap to Customer in connection with the Subscription Services, expressed in any medium or format.

**“EcoMap Software”** means EcoMap’s proprietary software application(s) that are made available to Customer as a subscription service (e.g. a software-as-a-service) under this Agreement.

**“Effective Date”** means for this Agreement the date specified in any Order Form or other document executed in connection with this Agreement which, unless indicated otherwise, is the date the individual document has been executed by both Parties (which is the latter date if executed by the Parties on different dates).

**“End User Data”** means any data associated with the creation of Authenticated User profiles.

**“IP Rights”** means any and all intellectual property rights of any type, recognized in any country or jurisdiction throughout the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation, all: (i) inventions, including patents, patent applications and statutory invention registrations or certificates of invention, and any divisions, continuations, renewals or re-issuances of any of the foregoing; (ii) trademarks, service marks, domain names, trade dress, logos, and other brand source distinctions; (iii) copyrights and works of authorship, or (iv) trade secrets and know-how.

**“Marks”** means any one or more of the trademarks, service marks, trade names, domain names, logos, business and product names, slogans, and registrations and applications for registration thereof owned and/or in use by a Party as of the Effective Date, or which are acquired and/or used by such Party thereafter.

**“Order Form(s)”** means one or more ordering documents for purchases of Subscription Services that are executed by Customer and EcoMap from time to time under this Agreement. By entering into an Order Form hereunder, an Affiliate of Customer agrees to be bound by the terms of this Agreement as if it were an original

party hereto. Order Forms are incorporated herein by reference.

**“Professional Services”** means, in each instance, the implementation, integration, configuration, training, consulting or other professional services provided by EcoMap pursuant to an Order Form under this Agreement.

**“Subscription Services”** means the online, Web-based applications and platform provided by EcoMap, including access to available Data Assets, as described in the Documentation, that are ordered by Customer or Customer’s Affiliates under an Order Form, but excluding Third-Party Applications and Professional Services.

**“Subscription Term”** means the period of time from the start date to the end date specified in each Order Form for each subscription purchased thereunder. Each renewal of a subscription, whether automatic or in writing, shall constitute a new Subscription Term.

**“Technology”** means all software, designs, formulas, algorithms, processes, and programs that are owned by EcoMap or its licensors and that are used to provide the Subscription Services and any Website.

**“Third-Party Applications”** means software products that are provided by third parties but may be configured to interoperate with the Subscription Services, Technology and Website.

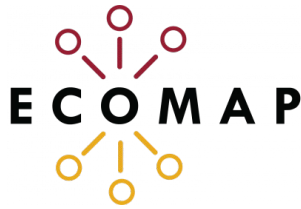
**“Users”** means persons who utilize the Platform by visiting the URL at which it is hosted and interacting with the Platform in any manner, including leaving the Platform without interacting with any pages or Platform elements.

**“Website”** means any website that is configured and hosted by EcoMap for Customer’s benefit under a URL agreed by the Parties and set forth in the applicable ordering document (e.g. Order Form).

**“Work Product”** means any expression of EcoMap’s findings, developments, inventions, analyses, conclusions, opinions, recommendations, ideas, techniques, designs, programs, enhancements, modifications, interfaces, source code, object code and other technical information resulting from the performance of Professional Services, support services, or any other services performed for the benefit of Customer.

*[End of Agreement Terms]*

## **Exhibit E. EcoBot Terms of Use**



**EcoMap Technologies**  
[www.ecomap.tech](http://www.ecomap.tech)  
*The Ecosystem Company*

## EcoBot Terms of Use

*Effective Date: August 31, 2023*

### 1. Introduction

This document serves as the Terms of Use for EcoBot, a chatbot software developed by EcoMap Technologies. EcoBot is designed to assist users in navigating various entrepreneurial resources and organizations within the City of San Antonio. This Terms of Use Agreement ("Agreement") governs your use of EcoBot.

### 2. License

Subject to the terms of this Agreement, EcoMap Technologies grants the City of San Antonio a non-exclusive, non-transferable, limited license to use EcoBot solely for assisting its citizens in accessing city entrepreneurial resources and information.

### 3. Restrictions

The City of San Antonio agrees not to:

- Embed or integrate EcoBot into any website or platform that is not expressly authorized by EcoMap.
- Sub-license, sell, rent, lease, transfer, assign, or otherwise distribute or commercially exploit EcoBot.
- Modify, make derivative works of, disassemble, decompile, or reverse engineer EcoBot, or attempt to do any of the foregoing.
- Access or use EcoBot in order to build a similar or competitive product or service without the prior written consent of EcoMap.

### 4. Term and Termination

This Agreement is effective until the end of the contract period specified in the service agreement between EcoMap Technologies and the City of San Antonio. Upon termination, the City of San Antonio must cease all use of EcoBot and immediately remove all embeds of EcoBot from its systems.

## **5. Intellectual Property and Data Rights**

All rights, title, and interest in EcoBot, including all intellectual property rights therein, belong solely to and will remain with EcoMap. The City of San Antonio reserves the right to retain all activity log data and EcoBot admin analytics generated by usage through the term of service. No other rights are granted to the City of San Antonio hereunder other than as expressly set forth herein.

## **6. Limitation of Liability**

EcoMap Technologies will not be liable for any indirect, incidental, special, consequential, or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from the use of EcoBot.

## **7. Indemnification**

Intentionally omitted.

## **8. Miscellaneous**

This Agreement constitutes the entire agreement between EcoMap Technologies and the City of San Antonio regarding EcoBot. If any provision of this Agreement is held to be invalid or unenforceable, that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of this Agreement will remain in full force and effect.

## **9. Contact Information**

If you have any questions about this Agreement, please contact EcoMap Technologies' Director of Business Development, Kevin Carter, at [kevin@ecomap.tech](mailto:kevin@ecomap.tech).

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## **Acknowledgment and Acceptance of Terms**

By using EcoBot, the City of San Antonio acknowledges that it has read, understood, and agrees to be bound by the terms of this Agreement.