

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
SELF-INSURED WORKERS' COMPENSATION THIRD PARTY CLAIMS  
ADMINISTRATION AND RELATED SERVICES**

STATE OF TEXAS           §  
                                      §  
COUNTY OF BEXAR       §

This Agreement (the “Agreement”) is entered into by and between the **City of San Antonio**, a Texas Municipal Corporation (“City”) acting by and through its Chief Financial Officer or designee, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and **Sedgwick Claims Management Services, Inc.**, by and through its Vice President (“Sedgwick”, “Consultant” or “TPA”). City and Consultant may be referred to herein collectively as the “Parties”.

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

**ARTICLE I  
DEFINITIONS**

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

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “City Council” is the City of San Antonio City Council.
- 1.3 “Consultant” is defined in the preamble of this Agreement and includes its successors and shall also mean Third Party Administrator (TPA).
- 1.4 “Contract Year One” means the Annual Worker's Compensation Claims Administration Services period beginning October 1, 2024.
- 1.5 “Contract Year Two” means the Annual Worker's Compensation Claims Administration Services period beginning October 1, 2025.

- 1.6 “Contract Year Three” means the Annual Worker's Compensation Claims Administration Services period beginning October 1, 2026.
- 1.7 “Contract Year Four” means the first renewal period of this Agreement, if the option to renew is exercised by City, for the Annual Worker's Compensation Claims Administration Services period beginning October 1, 2027.
- 1.8 “Contract Year Five” means the second renewal period of this Agreement, if the option to renew is exercised by City, for the Annual Worker's Compensation Claims Administration Services period beginning October 1, 2028.
- 1.9 “Director” shall mean the City’s Director of the Office of Risk Management or designee, unless otherwise specified.
- 1.10 “HCN” and “Network” mean a Workers’ Compensation Health Care Network implemented and managed by Injury Management Organization, Inc. (IMO) in accordance with the Texas Insurance Code, Chapter 1305 and regulations issued pursuant thereto, for the City’s self-insured Workers’ Compensation Program.
- 1.11 “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time.
- 1.12 “Local Government Record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.
- 1.13 “Lost Time Claim(s)” means a claim where indemnity benefits are payable beginning the first day of incapacity for work.
- 1.14 “Network Claim(s)” mean workers’ compensation claims occurring on or after April 1, 2019, with the exception of those City employees who currently reside outside of the Network service area and who do not elect to treat within the Network.
- 1.15 “Third Party Administrator” or “TPA” is defined in the preamble of this Agreement and includes its successors and shall also mean Consultant.

## **ARTICLE II**

### **TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall begin August 15, 2024 and terminate on September 30, 2027.

- 2.2 Renewals. At City's option, this Contract may be renewed and extended beyond the date stated above under the same terms and conditions for up to two (2) additional, one (1) - year periods. Renewals shall be in writing and signed by Director or designee. City shall also have the right to extend this contract under the same terms and conditions beyond the term or any renewal thereof, on a month-to-month basis, not to exceed a total of 180 days. Said renewals and month-to-month extensions shall not require City Council approval but are subject to and contingent upon appropriation of funds for payment of all costs to be incurred during those periods. An election by City not to renew this Agreement shall require no action or notification by the City to Consultant.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

### **ARTICLE III** **SCOPE OF SERVICES**

- 3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation to Consultant.
- 3.2 **Claims Administration.** Consultant shall:
- 3.2.1 Maintain the following dedicated staffing requirements: account executive, local account manager, workers' compensation supervisors, and claims staff to handle the City's account. The maximum caseload per adjuster shall be no more than:
- a. Workers' Compensation Lost Time: 135 claims
  - b. Workers' Compensation Medical Only: 270 claims
- 3.2.2 After completion of the first six (6) months of the Contract Year One, Consultant may submit a request to Director for approval to allow adjusters to work from home and/or out-of-state. Director may approve out-of-state staffing at City's sole discretion. In the event the Consultant utilizes work-from-home adjusters and/or out-of-state staffing, all additional costs associated with oversight, travel, training, cost of living state/locality adjustments other state taxes, unemployment insurances, etc., will be absorbed by the Consultant. Additionally, regardless of the time zone the adjuster is residing/working from, core business hours will remain identical to the required business hours in central standard time.
- 3.2.3 Ensure all adjusters dedicated to the City's account maintain a valid and appropriate Texas workers' compensation adjuster's license and make it available to the City upon request. Consultant will certify that each adjuster will have a minimum of 24

months of Texas worker's compensation experience prior to working under this Agreement on the City's account.

- 3.2.4 The dedicated account executive will spend at minimum 240 hours annually, on a recurring basis, with City's Risk Management staff to discuss status of active files, claims handling concerns, program operational issues, legacy, and cancer claims, facilitating monthly claims review and other areas of concern, at no additional cost to the City.
- 3.2.5 Maintain a dedicated telephone line for City employees to report claims directly to Consultant. Consultant shall also have a web-based reporting system for entering claims. All claims submitted by phone or electronically during normal business hours shall be entered into the Consultant's claims system by the Consultant on the same business day at no additional cost to City.
- 3.2.6 Keep the City fully apprised of Senate or House Bills regarding potential or actual changes to the State of Texas Workers' Compensation rules that may affect the City and provide notice of continuing education courses offered in San Antonio or the surrounding areas.
- 3.2.7 Consultant will implement and maintain an internal audit program, monitoring adherence to the contract and the Client Service Instructions (CSI). Audit results shall be reported to the Office of Risk Management no less than every six (6) months.
- 3.2.8 Submit to and cooperate with onsite visits and claims/operational audits performed by City's third-party consultants or City staff. Consultant shall advise City of any actual or perceived conflicts of interest.
- 3.2.9 Conduct (at least quarterly) compliance reviews of medical cost containment to include bill medical audits on a randomly selected sample of the claim files and provide reports to City.
- 3.2.10 Consultant shall conduct self-audits every six (6) months for all Lifetime Impairment Benefits (LIBs) and Death Income Benefits (DIBs) to verify the issuing of proper LIBs and DIBs rates as per Texas Department of Insurance (TDI), Division of Workers' Compensations (DWC). The self-audit shall include LIBs and DIBs that were paid on or after 2005, including closed claims. Findings shall be submitted to the Director of Risk Management or designee. At minimum, the self-audit shall verify:
  - a. That there is a complete wage statement when there are non-pecuniary benefits.
  - b. City notified the adjuster of the suspension of non-pecuniary benefits.

- c. That the Average Weekly Wage (AWW) and the benefit rate are calculated correctly.
  - d. LIBs and DIBs are being paid at 75% of the AWW.
  - e. That the LIBs rate is being increase by 3% each anniversary date of the entitlement to LIBs.
- 3.2.11 Develop and administer a customer service survey and a Complaint Handling and Escalation Program and obtain approval by the City. Consultant shall provide City results on a quarterly basis.
- 3.2.12 Consultant shall return employees' and City representatives' phone calls and emails within one (1) business day from receipt.
- 3.2.13 Cooperate with City in identifying overpayments, duplicate payments and provide explanation. If overpayments resulted from Consultant's failure to discharge duties diligently, Consultant shall reimburse the City within 30 days for overpayments and provide a report.
- 3.2.14 Develop and administer a fraud program, reporting claims with indication of fraud to the City's Director of Risk Management. Consultant will assign an investigator to investigate suspected fraudulent claims with City's advance written consent and report findings to City.
- 3.2.15 Assume the role and responsibilities of the City's Reporting and Recovery Agent pursuant to the Medicare, Medicaid, SCHIP Extension Act 2007, 42 USCA §1395y, as amended from time to time (MMSEA), at no additional cost to the City, for the purpose of fulfilling the reporting requirements contained therein.
- 3.2.16 Consultant shall ensure electronic reporting to the proper authorities of all claims as required by MMSEA at no additional cost to City.
- 3.2.17 Prepare and submit all queries and quarterly reports to the Center for Medicare and Medicaid Services (CMS) in accordance with the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), 42 USCA §1395y, as hereafter amended, at no additional cost to City.
- a. Timely respond to each Conditional Payment Notice (CPN) and each Conditional Payment Letter (CPL) received from the Conditional Repayment Center (CRC) and take all necessary action incident thereto.
  - b. Timely investigate and respond to each recovery demand letter issued by the CRC and take all necessary action incident thereto.

- c. Investigate all notices and demands received from the CRC to determine whether the claims listing of all items and services paid are related to the City employee's workers' compensation claim.
  - d. Timely dispute any items and services that are not related to the City employee's workers' compensation claim.
  - e. Handle negotiations with either Benefits Coordination and Recovery Center (BCRC) or the CRC as appropriate.
  - f. When settling a workers' compensation case, initiate the Final Conditional Payment process on the Medicare Secondary Payer Recovery Portal (MSRP) when (1) the settlement is pending, and (2) no outstanding Ongoing Responsibility for Medicals exists, or as otherwise directed by City.
  - g. Timely file an appeal when appropriate. Take all necessary actions incident thereto.
  - h. Submit payment as appropriate where City has responsibility and Medicare has made conditional payments. Submit payment of part or all of a demand amount while an appeal is pending, if approved by City, in order to avoid accrual and assessment of interest.
  - i. Keep City apprised of all CPNs, CPLs, appeals and actions taken in accordance with each.
- 3.2.18 Indemnify, defend, and hold City harmless from all fines and penalties levied against the City, Consultant, or Consultant's subcontractors for Consultant's or Consultant's subcontractors' failure to comply with MMSEA requirements. In no way will Consultant, pass along or otherwise cause City to pay fines which are levied solely against the Consultant and/or Consultant's subcontractors or levied against City due to Consultant's or Consultant's subcontractors' negligence, errors or omissions.
- 3.2.19 Prepare and file, with the appropriate State agencies, all forms required for the City to maintain its qualifications as a self-insured political subdivision, as authorized under Texas Labor Code, Chapter 504, unless otherwise directed by City. Expenses related to maintaining this status under the rules and regulations of Texas shall be passed onto the City.
- 3.2.20 Provide weekly courier service for pick-up and delivery of new claims, lawsuits and other information from the City, at a time to be coordinated with the City, at no additional expense to the City.

- 3.2.21 Securely store all closed claim files and claim files currently in storage in locked temperature and humidity-controlled storage, at no additional cost to the City, during the term of the contract for paper files.

3.3 **Claims Management.** Consultant shall:

- 3.3.1 Establish and assign claims within 24 hours from receipt of the initial report.
- 3.3.2 Have management/supervisory level personnel assign claims, utilizing appropriate cost center numbers, department business area numbers and functional area numbers as provided by City.
- 3.3.3 Investigate and adjust reported claims in accordance with the Texas Workers' Compensation Act, and applicable City Ordinances, as may be amended from time to time, unless otherwise directed by City.
- 3.3.4 Contact lost-time injured employee, medical provider, and applicable City department within one (1) business day of claim assignment via telephone call. Daily attempts for the next three (3) business days must continue prior to mailing contact letter if the employee cannot be reached by phone.
- 3.3.5 Take recorded statements from all lost-time injured employees as part of the investigation, at no cost to the City, within 24 hours of receipt of claim.
- 3.3.6 Maintain personal contact with all lost-time injured employees at least once every three (3) weeks in order to maintain rapport and monitor medical progress and overall status.
- 3.3.7 All medical only claims will need an initial employee contact within one (1) business day from the receipt of the claim to determine if claim will need to be upgraded to an indemnity (lost time) claim or be downgraded to an incident only claim. The initial employee contact shall consist of an employee statement and confirmation of any medical treatment. A written statement received with the Supervisor Report of Injury/Illness (SRII) does not substitute for the initial employee contact.
- 3.3.8 Adjuster will downgrade the medical only claim to an incident only claim when confirmation from the employee is received that medical treatment was declined or not sought by the employee. The downgrade must be completed within 15 calendar days from the date the claim was received by the Consultant.
- 3.3.9 Claims with subrogation potential must be reported to City's Risk Management staff within fifteen (15) calendar days after the date of receipt by the Consultant.
- 3.3.10 Estimate, establish and maintain reserves on a "most probable" basis. In reserving practices, the Consultant will take into consideration indemnity, medical,

rehabilitation, and allocated expense categories, and all other major subcategories of each. Changes in reserves must be reviewed and approved by Consultant's claims supervisor. Any reserves increasing the total incurred over \$50,000 and all Lifetime Cost Analyses require authorization by the City's Director of Risk Management or designee.

- 3.3.11 Obtain approval from the City on surveillances, life expectancy plans and vocational evaluations.
- 3.3.12 Use a 30-day adjuster diary system for timely file review. Each file diary review, including reserves, shall be documented in detail in the claim file notes. All reserves will be monitored and adjusted accordingly. File notes shall contain an explanation for any adjustment. Diary system shall be made available electronically to the City in a read-only format.
- 3.3.13 Timely initiate all initial and subsequent weekly benefits in accordance with the Texas Workers' Compensation Act.
- 3.3.14 Have the capacity to issue income benefits electronically via direct deposit as directed by the City.
- 3.3.15 Consultant shall notify and provide the injured employee with an explanation of how Temporary Income Benefits (TIBS), Impairment Income Benefits (IIBs), Supplemental Income Benefits (SIBs), Lifetime Income Benefits (LIBs), and Death Income Benefits (DIBs), are calculated, including adjustments to each injured employee on the appropriate PLN. Consultant shall provide an example to employees and the City as requested.
- 3.3.16 Consultant shall request a review of all impairment ratings above ten percent (10%) and notify the City of all impairment ratings above fifteen percent (15%).
- 3.3.17 Consultant shall adhere by the Salary Continuation policies implemented by the City, including subjecting uniform personnel to a seven (7)-day disability waiting period and issuing vouchers for TIBs payments. Guidelines will be detailed in the Client Service Instructions (CSI) provided by the City.
- 3.3.18 Report all workers' compensation claims to Central Index Bureau (CIB), also known as ISO or claim index, upon file creation with a copy retained in the file. Resubmit an index every six (6) months until case is closed. Consultant shall NOT allocate CIB expense to the City.
- 3.3.19 Pursue all applicable contributions from prior compensable injuries, upon receipt of final impairment rating.
- 3.3.20 Promptly obtain City employee's signature authorizing release of medical records and obtain copies of medical bills and records.



- 3.3.21 Provide an analysis letter to the Independent Medical Exam doctor, Required Medical Exam doctor, and/or Designated Doctor along with copies of all medical reports and films necessary for a successful and complete examination.
- 3.3.22 Timely pay all bills related to the claim, including fees owed to third parties, and benefits owed in accordance with the Texas Workers' Compensation Act.
- 3.3.23 Consultant shall abide by the understanding that the amounts charged for medical or vocational case management, PPO fees, private investigative fees, structured settlement fees and Allocated Loss Adjustment expenses shall be paid under the expense portion of the claim and not under indemnity or medical.
- 3.3.24 Consultant shall abide by the understanding that no charge shall be levied against the City for the payment processing of Allocated Loss Adjustment expenses.
- 3.3.25 The City has engaged a law firm for legal representation for all hearings before the TDI/Division of Workers' Compensation, who also acts as City's Austin Division Representative. Consultant will be required to coordinate with and work closely with this representative.
- 3.3.26 Provide a written report to City on the proceedings of any administrative hearing within 72 hours after such hearing, at no additional cost to the City. Any representation of the City beyond administrative hearings and selection of legal counsel for these matters shall be approved by Director.
- 3.3.27 Adjuster shall attend all meetings, to include Benefit Review Conferences and any other administrative hearings and legal proceedings that the City, or its outside counsel requests, at no additional expense to the City.
- 3.3.28 Electronically transfer information required by statute or regulation to the Department of Insurance, Division of Workers' Compensation (TDI-DWC), and other involved parties in a timely manner at no expense to the City and document the claim file to support compliance and confirmation date.
- 3.3.29 Obtain all necessary information to fully complete and file all required forms with the TDI-DWC, as required by law or regulation.
- 3.3.30 Adjuster shall mail any and all required forms to the employee or designated party such as the DWC 1, Rights and Responsibilities, medical authorization form, HCN Network Requirements, DWC 3 (wage statement), DWC 6 (supplemental report of injury), and all Plain Language Notices (PLN) on behalf of the City and at no cost to the City.
- 3.3.31 Adjuster shall amend the First Report of Injury to include additional data, when necessary, on behalf of the City prior to sending to Electronic Data Interchange.

- 3.3.32 Maintain copies of all written correspondence within the claim file, preferably electronically, and make same available at any time upon the City's request at no additional cost to the City.
- 3.3.33 Consultant shall follow the Client Service Instructions for the reporting to the City's excess insurance provider.
- 3.3.34 Use proactive approval and coordinate activities with the claim's adjusters and supervising staff with regard to case management services. Follow the City's established protocols for case management referrals. See **Attachment D**, Medical Case Management Protocol.
- 3.3.35 Monitor appropriateness of treatment, necessity, and continuation of medical treatment in relation to an on-the-job injury/illness.
- 3.3.36 Properly document files regarding analysis, recommendations/reviews, pre-authorization, etc. Documentation must show due diligence and reasonableness for any recommendations made, should these be challenged through administrative or judicial channels.
- 3.3.37 Ensure that staff uses recommended Official Disability Treatment Guidelines (ODG) to properly handle claims and manage overutilization for non-network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.3.38 Obtain pre-approval from City on all vocational evaluation for job analysis.
- 3.3.39 Assist with facilitating return to work.
- 3.3.40 Oversee that timely notification of decisions regarding preauthorization are being provided timely to all parties.
- 3.3.41 Assist in providing quarterly reporting, analysis and improvement opportunities for all claims management services.
- 3.3.42 Assist on implementing early medication intervention protocols where medication peer reviews are done with suggestions of appropriate medication for all claims.
- 3.3.43 Monitor appropriateness of prescription(s), necessity, and continuation of prescription(s) in relation to an on-the- job injury/illness.
- 3.3.44 Properly document files regarding analysis, recommendations/reviews, pre-authorization, etc. Documentation must show due diligence and reasonableness for any recommendations made, should these be challenged through administrative or judicial channels.

- 3.3.45 Assist with providing recommendations on all claims management services through experienced, qualified, and licensed professional staff. Services of a medical director may be utilized on a case-by-case basis as approved by City.

3.6 **Risk Management Information System (RMIS)**. Consultant shall:

- 3.6.1 Provide a cloud-based application (claims platform) necessary to perform services hereunder.
- 3.6.2 Identify and proceed to correct any inoperative software immediately after City reports a problem.
- 3.6.3 Provide City direct access to its RMIS for as many users as City requires, for the term of this contract, including any extensions or renewals hereof, and for an additional 90 days following expiration or termination. Risk Management shall have direct access to the RMIS' electronic claims file and report writer. The current estimated number of users is thirty-seven (33) for workers' compensation claims and thirteen (14) for liability claims.
- 3.6.4 Work with the City to ensure reporting is accessible to the City and includes the ability to customize as the City administers its self-insured general liability program internally and shall use the Consultant's RMIS to facilitate administering its program, in addition to using Consultant's RMIS for the workers' compensation program.
- 3.6.5 Ensure Consultant's RMIS shall be capable of, though not limited to, the following system capabilities:
- a. Web-based access via City compatible Internet connection, software, and hardware 24 hours a day, seven (7) days a week, 365 days per year, with appropriate disaster recovery and system unavailability mitigation.
  - b. Electronic capability to report claims directly into claims system, at no cost to the City.
  - c. Client specific modifications to the reporting system, at no cost to the City.
  - d. Direct claim reporting of new claims (DWC 1, 3 and 6) 24 hours a day, seven (7) days a week throughout the year.
  - e. Providing all usual and necessary statistical claim information data, including client specific fields.
  - f. Capturing detailed information on medical bills, other payments, client, injured worker, injured worker history, provider, diagnosis and treatment.

- g. Capturing return to work dates.
- h. Capturing North American Industrial Classification System Codes.
- i. Reporting the number of claims for a specific time period by injury date and by report date.
- j. Producing monthly reports on employees who, in addition to the claim filed in a particular month, have filed one or more prior claims with City.
- k. Accurately calculating the number of full and partial days of disability for each claim, accounting for all periods of intermittent changes in the claimant's work status.
- l. Accurately reflecting paid and incurred amounts of net subrogation recoveries.
- m. Accurately capturing the number of lost time claims reported during a specific period for medical only claims, reopened claims, and prior claims.
- n. Distinguishing among the different types of payments made for cost containment services, and tracking same, including, but not limited to, state fee schedule, utilization review results and clinical edit reductions.
- o. Electronically making payment for indemnity and death benefits, programmed specific to Texas, and calculating the amount due based upon wages earned and the type of allowance, offering accuracy, timeliness, edit and audit processing, approval review and check production.
- p. Fully accessible file diary system to the City in view format.
- q. Tracking and differentiating between DWC Form PLN 1 and PLN 11 denials and disputes by the reason for the denial/dispute, such as unallowed condition, wage calculation, waiting period and vocational rehabilitation.
- r. Tracking Benefit Review Conferences and Contested Case Hearings through a diary system, which can be altered based upon the City's needs and the nature of the claim.
- s. Tracking claims by City location codes and coordinates, which can then be extracted by department, division, section and exact location.
- t. Modification of fields or field selection at no additional cost to the City within the first year, such as:

- 1. Rates field: DIBS, LIBS, SIBS, IIBs, etc.

2. Dates field: 15th Day from claim notice, 60th day from claim notice, MMI
3. Denial Reason and Type fields
4. Salary Continuation (Y/N) field
5. Preventability field
6. Police Report field
7. Unit number field
8. Alternative Claim number field
9. Employee Demographics fields
10. NCCI Job Code fields
11. Cost Center fields
12. Other fields deemed necessary by City

u. Ensuring secured data and performing regularly scheduled backups of its RMIS system, daily at a minimum.

3.6.6 Provide reports through its web based RMIS as requested by City. All reports shall be available online and may be run at any frequency requested by City whether for workers' compensation or liability claims. Custom formatting and detailing of data fields shall be available. Available reports shall include, but are not limited to:

- a. All Open Claims.
- b. Claims Summary by Claim Year, including claim counts.
- c. Liability Pending.
- d. Claim Type.
- e. Claims Lost Detail report providing all claims losing time and salary continuation.
- f. Claims Paid.
- g. A loss run, which shall include a record of overpayments recovered by fiscal year each month. This report shall be submitted to City by the fifteenth (15<sup>th</sup>) working day of each month.
- h. A report of gross billings, number of audited bills, cost of audit, fee guideline reductions and PPO discounts, net amount, and percentage of savings on a monthly basis. This report shall be submitted to City by the fifteenth (15<sup>th</sup>) working day of each month.
- i. A monthly recap report via electronic mail no later than fifteen (15) calendar days after the last day of the month.

- j. A monthly data and trending analysis of the program's successes and opportunities for improvement no later than the tenth (10<sup>th</sup>) day of every month, for the month prior; this reporting should be presented in a digestible format approved by the City. Consultant will participate in budget estimates and re-estimates, at the City's discretion and at no additional cost to the City.
  - k. A monthly status report on all open administrative proceedings (i.e., Benefit Review Conference, Contested Case Hearing, and Administrative Hearings).
  - l. A quarterly executive summary of issues, trends, opportunities, and results as it relates to workers' compensation program management.
  - m. A status reports of all the excess insurance carriers as warranted by the severity and complexity of the claim.
  - n. Consultant shall provide all other monthly reports to the City, as requested, at no additional cost to City.
- 3.6.7 Provide City with RMIS training for all users, whether the use is for workers' compensation or liability claims. Training shall occur on a quarterly basis, or as deemed necessary by City. The first training session shall be held within ten (10) business days of the start of the Agreement and will occur at a City-designated facility, unless otherwise approved by City. Length of training sessions shall be sufficient, as determined solely by City, to ensure adequate knowledge for use of the RMIS, including, but not limited to, running reports.
- 3.6.8 Grant City a paid-up, non-exclusive, non-transferable license for its RMIS/Claims Administration Software, and will procure on City's behalf a paid-up, non-exclusive, non-transferable license for any required third-party software that may be necessary for use in conjunction with Consultant's software, for an unlimited number of City users. The term of the licenses shall be for the duration of this Agreement, including any extensions or renewals thereof and for 90 calendar days after contract termination or expiration.
- a. City acknowledges the licenses granted are limited to City's own use exclusively and that City will not have the right to sublicense any of the software in either its original or modified form.
- 3.6.10 Retain all ownership and copyright interest in and to any and all software, computer programs, business methods, related documentation, technology, know-how and processes developed by Consultant.
- 3.6.11 For City's general liability claims, Consultant shall:

- a. Establish separate branch and client organization structure for general liability Claims in RMIS based on City's existing branch and client organization structure in the RMIS currently in use.
- b. Transfer all current existing files and notes from RMIS general liability claims into Consultant's RMIS.
- c. Establish City's registered users as full users in Consultant's general liability claims RMIS. Restrict access to City's registered users as directed by City's Risk Management designee.
- d. Consultant's RMIS must interface with City's SAP system, enabling general liability payments issued through the City's SAP system to be reflected in the claim file in Consultant's RMIS system without requiring manual entry. Transfer shall include but is not limited to general liability payment, Human Resources demographics, and subrogation recovery data feeds. Consultant shall establish a Secure File Transfer Protocol (SFTP) at no additional cost to City.

3.6.12 Data Conversion Prior to Effective Date of Agreement (Non-Billable Hours):

- a. Consultant shall establish all files including documents, videos, photos, recorded statements, all data columns and fields, and any other claim assigned data file sixty (60) calendar days prior to the commencement of Contract Year One.
- b. Consultant shall communicate and mail notification of City's new TPA to all claimants, vendors, uniform unions, legal counsel, and other parties about TPA transition within thirty (30) calendar days of the contract effective date.
- c. Banking or funding shall be set up within thirty (30) calendar days of the start of the contract effective date. Consultant and City shall coordinate to set up funding.
- d. General liability payment, Human Resources data, and all other "City to Consultant" feeds shall be set up thirty (30) calendar days prior to the commencement of Contract Year One.
- e. Consultant shall meet with City on weekly basis until City confirms completion of transition.

3.6.13 Consultant shall conduct initial file review and update claim files upon assignment of transferred claims within ninety (90) calendar days of the beginning of the contract term.

3.6.14 Data Conversion at Termination of Agreement by expiration of the term or any other manner provided therein:

- a. Consultant shall transfer all City's hard and electronic files, including both workers' compensation and general liability claim files from Consultant's RMIS system to City or its new TPA, as directed by City.
- b. Consultant shall be responsible for working with new TPA on transferring hard files and electronic data at no cost to the City. Consultant shall convert electronic data, upload, download, and migrate as necessary to the new system to be used by City within thirty (30) calendar days of the contract termination.
- c. Consultant's RMIS system shall remain fully accessible to all City registered users for at least ninety (90) calendar days after contract expiration date.
- d. Consultant shall issue live checks for weekly income benefits for up to ninety (90) calendar days following the termination of the contract.
- e. Upon termination of the contract, by expiration of the term or any other manner provided therein, Consultant shall have all outstanding invoices received through the date prior to termination paid and processed and shall have all files completed and updated in a neat and orderly manner.
- f. Consultant shall return all closed claims in paper format to the City within thirty (30) calendar days to a facility of the City's choice. Files must be accompanied by appropriate paid printouts on each file.

3.7 **Account Funding/Banking.** Consultant shall:

- 3.7.1 Be able to receive an electronic transmission from the City containing basic employee information. City currently uses the SAP system.
- 3.7.2 On City's behalf, will open and maintain a Bank Account with TBD, with offices throughout San Antonio, Texas ("the Bank") for the sole purpose of payment of claims expenses pursuant to this Agreement.
- 3.7.3 In the event of the loss of City funds held by Consultant pursuant to this Agreement, to the extent such loss does not result from City's own negligence or misconduct, reimburse City for all funds lost and any costs associated therein, within thirty (30) days of such loss.
- 3.7.4 Funds in the Bank shall be held in cash. If funds are to be invested, written acknowledgment from the City is required and investments must be made in compliance with the Texas Public Funds Investment Act and the City's Investment Policy. Any interest earnings must be deposited back into the Bank Account.
- 3.7.5 Issue checks and non-draft payments on a "positive pay" and "positive pay payee" basis.



- 3.7.6 Issue the Office of Risk Management via email a weekly summary statement (invoice) and corresponding detail. Statements should be issued no later than 10 a.m. CST, each Monday for the City to review, approve, and issue payment via ACH by the end of the week. Late statement receipt will result in payment settlement occurring the following week.
- 3.7.7 Provide monthly standard banking reports to include: Detail Daily Statistics; Summary and Net Charge Distribution; bank statement and reconciliation report; report of check void/reissuance activity; and Issued-Not-Paid outstanding check reports.
- 3.7.8 For all checks issued by Consultant under this Agreement that have remained uncashed after a period of six (6) months, send search letters. For any checks issued by Consultant under this Agreement that have not been cashed within thirty-six (36) months, issue a stop-payment on such checks and perform escheatment per Texas Property Code. A report shall be provided to City annually showing items that have been escheated.
- 3.7.9 Upon termination of contract, by expiration of the term or any other manner provided therein, coordinate with City to perform final reconciliation and review of outstanding checks. The Bank Account balance will then be adjusted to equal the sum of all items issued by not cashed. This balance will remain in the Bank Account for a limited period to fund the outstanding checks. This period will be reasonable, as determined by Consultant, and applied on a consistent basis to the Consultant's self-funded customers. At City's expense, Consultant will request in writing to close the Bank Account and recover any funds remaining in it. Consultant will provide bank account statements and bank reconciliation reports, including reports City needs for purpose of escheatment.
- 3.7.10 At no additional cost to City, provide the checks using fraud protection measures.
- 3.7.11 Add new vendors to Consultant's system to enable payment, establishing a Vendor ID, for workers' compensation claims. Vendors must be added within five (5) business days of City's request. Consultant shall annually prepare and mail all IRS forms 1099 Misc. for all vendors.
- 3.7.12 Consultant shall provide upon request by the City, annual audited financial statements for fiscal years during the contract term.
- 3.7.13 Provide periodic information to, and cooperate with, the City's actuarial consultant.
- 3.7.14 Provide to City an annual "SOC 1" Type 2 and "SOC 2" Type 2 report in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, which supersedes the SAS 70.

3.8 Performance Standards. Listed below are Performance Standards, which must be met by the Consultant throughout the contract term, including any renewal terms and excluding the initial ninety (90)-day transition period at the start of the contract. Also listed below are the amounts at risk for failure to meet the respective Performance Standards. The amount of fee to be withheld is not to be considered as a penalty, but shall be deemed, taken or treated as reasonable liquidated damages, fixed and agreed upon by and between Consultant and City because of the impracticality and difficulty of fixing and ascertaining the actual damages City would sustain in the event of a failure or refusal to meet each performance standard, and the above-mentioned amounts are agreed to be the amount of damages that City would sustain. The Amount at Risk is stated as a percentage of the Consultant's Annual Worker's Compensation Claims Administration Services Fee. City's actual withholding from the Consultant's fees for failure to meet the Performance Standards shall not, in any contract year, exceed 10% of the annual contract cost. However, this sum does not include any liquidated damages that may be assessed for failing to meet the guarantee described below related to the Performance Based Oversight (PBO) Audit performed by the State.

3.8.1 If the Consultant materially breaches one or more of the Performance Standards, it agrees to pay the aggregate of the respective amounts at risk in the form of a reduction in the Annual Worker's Compensation Claims Administration Services Fee due and payable under the Agreement. Such amount will be deducted from the Annual Worker's Compensation Claims Administration Services Fee due the month following the determination that the Performance Standards have been breached. If such determination is made after termination of the Agreement or at the end of the Agreement Term, the Consultant agrees to pay the City an amount equal to the aggregate of the respective amounts at risk in a lump sum payment within thirty (30) calendar days following written notification from the Director of the amount due. Consultant's performance under the Performance Standards will be evaluated by the City's third-party claims auditor. In the absence of an auditor, the Performance Standards will be jointly reviewed and evaluated by the Consultant and the Director. Repayment of the amounts specified herein shall not be the City's sole remedy in the event that the Consultant materially breaches one (1) or more of the Performance Standards and shall not prejudice the City's right to terminate this Agreement for cause.

<b>PERFORMANCE STANDARD</b>	<b>AMOUNT AT RISK</b>
a) Completing and documenting quality facts pertaining to three (3) or four (4) point contact for each claim, namely injured workers, the supervisor, medical provider, and witnesses, if applicable, within twenty-four (24) hours of receipt of the claim on one hundred percent (100%) of a randomly selected representative sample. Daily attempts for the next three (3) business days must continue prior to mailing contact letter if the City employee cannot be reached by phone.	1.0%

b) Documenting quality claim file notes when contacting all lost time injured employees and medical providers at least once every three (3) weeks in order to maintain rapport, monitor medical progress and overall status.	1.0%
c) Taking quality recorded statements, documenting daily attempts, or reasons a recorded statement cannot be taken on all lost time Claims within twenty-four (24) hours of receipt of claim in ninety percent (90%) of a randomly selected representative sample.	0.33%
d) Documenting claim file notes within forty-eight (48) hours of claim receipt regarding prior claims history of injured workers from City historical claims and other sources and evidencing awareness of contribution applicability to subject claim in ninety-five percent (95%) of a randomly selected representative sample.	0.67%
e) Initiating initial and subsequent weekly benefits within the statutory time constraints on one-hundred percent (100%) of a randomly selected representative sample	2.0%
f) Performing the claims management function in such a way as to readily demonstrate a functional diary system for adjusters and supervisors in ninety-five percent (95%) of a randomly selected representative sample. This includes documenting claim file notes with a clear strategy and action plan for disposition.	0.67%
g) Maintaining a manageable workload of no more than 135 active (meaning TIBs are being currently paid or were paid) Lost Time claims. If the Adjuster's caseload exceeds 135 active lost time claims, Consultant agrees to reduce same within thirty (30) calendar days. Caseloads will be reported to the City once a month.	0.33%
h) All open cases will be maintained on an open diary and all files must be reviewed every thirty (30) calendar days (with the exception of medical maintenance files which can be reviewed every ninety (90) calendar days) on ninety percent (90%) of a randomly selected representative sample. Unless clearly documented, no file shall go more than thirty (30) calendar days without being reviewed. Each open indemnity case must have a plan of action with a timeline, which provides adequate information to demonstrate how the adjuster intends to move the claim to closure. An initial action plan will be documented within fifteen (15) calendar days of receipt of claim. If for any reason a diary date is expected to exceed thirty (30) calendar days, the adjuster must document with supervisor acknowledgment	0.66%
i) The supervisor must review all Lost Time Claims files after the Adjuster has completed their three-point contact, investigation, reserves and plan of action. The supervisor must document the initial review within fourteen (14) calendar days of receipt of claim with subsequent supervisor reviews documented every sixty (60) calendar days until file closure on ninety-five (95%) of a randomly selected representative sample.	0.67%

j) Provide quarterly reports to City's excess insurance provider on each specific claim that meets the reporting criteria of each provider. Consultant shall provide status of claim(s) to City on one hundred percent (100%) of a randomly selected representative sample.	1.0%
k) Document and provide monthly reports of actual lost time duration to MD guidelines on all claims involving lost time on one hundred percent (100%) of a randomly selected representative sample.	0.67%
l) Referring claims for telephonic or field case management per the referral triggers as outlined in the City's Medical Case Management protocol on one-hundred percent (100%) of a randomly selected representative sample.	1.0%
<b>TOTAL</b>	<b>10%</b>

3.8.2 Performance Based Oversight (PBO). As a measure of performance, Consultant must score 90% or higher on any Performance Based Oversight (PBO) audits conducted by the State of Texas, through any of its departments or agencies, during the first one hundred and eighty (180) calendar days of the start of this Agreement, and ninety-five (95%) or higher for the remainder of the contract term and any renewals. If Consultant fails to achieve this performance measure, Consultant shall pay City the sum of \$1,000 for each percentage point, rounded to the nearest whole number, which Consultant falls below the guarantee, as liquidated damages. Consultant shall apply this sum as a credit on the next invoice Consultant submits to the City after receipt of notice from City. If no further invoices are due, Consultant shall pay this sum within thirty (30) calendar days of City's demand for same. Consultant and City agree that the actual damages that City may sustain by reason of the breach by Consultant of this guarantee are uncertain and correct ascertainment would be difficult, and that the sum specified above would be a reasonable compensation for such breach.

3.9 Liquidated Damages and Performance Incentives. Consultant understands and acknowledges this Agreement includes Performance Standards and guarantees for the protection and sole benefit of the signatories, liquidated damages, and performance incentive-based pricing structures that are in addition to any remedies the City may have in the event the selected Consultant underperforms, fails to perform, refuses to perform, is negligent in performing, or does not perform in accordance with the specific requirements of law or the Agreement. The provisions and the remedies stated herein shall survive the termination of the Agreement.

3.10 Audits/Site Visits. At a time and place in a manner mutually agreeable to both parties, City, or other entities entitled or required by law, may conduct audits or site visits of Consultant. The audits conducted may focus on administrative requirements, fraud, or other issues related to the services provided for under the Agreement. Consultant agrees to cooperate with and support the efforts of the auditors and/or City. Consultant understands and agrees that City does not indemnify Consultant for any costs incurred in connection with these

audits. The preceding notwithstanding, it shall be a condition precedent that prior to any third-party audit or site visit such third-party shall have entered into a nondisclosure agreement with Consultant in order to protect proprietary and competitively sensitive information. The nondisclosure agreement would not be applicable to the reporting of outcomes related to the results of the audit.

- 3.11 Time is of the essence in the performance of this Agreement. Consultant shall strictly comply with all deadlines, requirements, and standards of performance for these services.
- 3.12 Consultant shall discharge its duties under this Agreement as a prudent expert solely in the interests of the City with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Agreement and in a manner that avoids conflicts of interest and self-dealing.
- 3.13 Consultant agrees to employ, at its own expense, all personnel required to perform the services described in this Agreement. Personnel employed by Consultant shall neither be employees of nor have any contractual relationship with City. All Consultant personnel engaged in providing services under this Agreement shall be fully qualified and shall be authorized or licensed to perform such work as required.
- 3.14 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 hereto. 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, as stated herein, even should City elect not to terminate.

#### **ARTICLE 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 in accordance with **Attachment B**, Price Schedule, as follows:
  - 4.1.1 Annual Worker's Compensation Claims Administration Services Fee for Contract Year One is \$1,658,000.
  - 4.1.2 Annual Worker's Compensations Claims Administration Services Fee for Contract Year Two is \$1,708,000.
  - 4.1.3 Annual Worker's Compensations Claims Administration Services Fee for Contract

Year Three is \$1,759,000.

- 4.1.4 Annual Worker's Compensations Claims Administration Services Fee for Contract Year Four is \$1,812,000, subject to contract renewal for this period.
- 4.1.5 Annual Worker's Compensations Claims Administration Services Fee for Contract Year Five is \$1,866,000, subject to contract renewal for this period.
- 4.1.6 Monthly Extensions. If City extends this Agreement in accordance with section 2.2, City shall pay Consultant's Worker's Compensations Claims Administration Services Fee prorated in accordance with the rates stated in section 4.1.5 above. Services charged to the claims file during such extensions shall be paid at the rates shown for Contract Year 5 in section 4.3 below.

- 4.2 City shall pay fees owed to Consultant described in sections 4.1.1 – 4.1.6 above in equal monthly installments in arrears. Consultant shall submit monthly invoices to City, in a form acceptable to City, no earlier than the 30<sup>th</sup> day of each month. City shall pay properly submitted invoices within thirty (30) calendar days of receipt and approval by Director. Invoices shall be submitted to [accounts.payable@sanantonio.gov](mailto:accounts.payable@sanantonio.gov) with a copy to the Office of Risk Management, [cynthia.dittrich@sanantonio.gov](mailto:cynthia.dittrich@sanantonio.gov)
- 4.3 Obtain approval from the City on Special Investigation Unit (SIU) Services to included but not limited to Research Services, Surveillance Services, Field Services, and Assessment Services. Rates are show below.

Service name	Price
<b>Research services</b>	
Social media investigation	\$275
Smart plus investigation	\$475
Comprehensive background	\$525
Canvassing services	\$250
Skip tracing/individual locate	\$315
Asset check	\$225
Criminal and civil check	\$135 plus cost of records Additional counties or names : \$75 (per county or name)
Records request	\$100 plus cost of records
Social media monitoring	\$25 per week of monitoring
Other research services	Quote upon request
<b>Surveillance services</b>	
Surveillance	\$95 per hour (portal to portal): All other states \$100 per hour (portal to portal): California, Hawaii and New York <i>Mileage charged at IRS standard mileage rate</i> <u>Additional expenses to hourly rate:</u> Report writing (up to 1/2 hour per day at standard surveillance rates) Pre-surveillance investigation: \$85 License plate searches: \$20 (per search post pre-surveillance ) <u>Vehicle Sightings Report</u> (license plate recognition) - \$75
Unmanned surveillance	\$750 per day (three-day minimum) Deployment and extraction of stationary device: \$95 per hour: All other states \$100 per hour: California, Hawaii and New York <i>Mileage charged at IRS standard mileage rate</i>
Video copies	\$100 per additional copy plus shipping
<b>Field services</b>	
Alive and well check - in person	\$425: All other states \$450: California, Hawaii and New York
Alive and well check - virtual interview	\$125
Activity check	\$450: All other states \$475: California, Hawaii and New York

Service name	Price
AOE/COE Recorded statement Scene investigation Trial/deposition	\$95 per hour (portal to portal): All other states \$100 per hour (portal to portal): California, Hawaii and New York <i>Mileage charged at IRS standard mileage rate</i>
International investigations	Quote upon request
Other field services	Quote upon request
<b>Assessment services</b>	
Suspect file review	\$125 per hour
Fraud investigation (includes state reporting)	\$125 per hour
Red flag analytics review	\$125 perhour
Other assessment services	Quote upon request

- 4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by City in accordance with Article XIV. Amendments. No additional fees or expenses may be charged to the claims file, other than that as provided in Section 4 above, without the express written approval from the City Attorney.
- 4.5 Final acceptance of work products and services require written approval by City. The approving official shall be the Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## **ARTICLE V**

### **OWNERSHIP OF DOCUMENTS**

- 5.1 In accordance with Texas law, Consultant acknowledges and agrees that all Local Government Records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such Local Government Records produced by or on the behalf of City pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 Consultant acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of City. Consultant will turn over to City all such records. Consultant shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.



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

## **ARTICLE VI**

### **RECORDS RETENTION**

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant’s expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.
- 6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.
- 6.4 Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Consultant acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Consultant agrees that the contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.5 Consultant warrants and certifies, that it, has not knowingly or intentionally failed to comply

with this subchapter in a previous contract. City hereby relies on Consultant's certification, and if found to be false, City may terminate this Agreement for material breach.

## **ARTICLE VII** **TERMINATION**

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon thirty (30) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 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 (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 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 30-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 contractor 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 contractor 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 Failure to comply with the terms and conditions stated in Article XIII. SBEDA;
- 7.4.2 Bankruptcy or selling substantially all of company's assets;
- 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
- 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to

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

- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## **ARTICLE VIII**

### **NOTICE**

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

If intended for City, to:

City of San Antonio  
Office of Risk Management  
Attn: Debra Ojo, Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If intended for Consultant, to:

Sedgwick Claims Management  
Services, Inc.  
8125 Sedgwick Way  
Memphis, Tennessee 38125

## **ARTICLE IX**

### **INSURANCE**

- 9.1 Consultant must provide a completed Certificate(s) of Insurance to City's Office of Risk Management. The certificate must be:
- 9.1.1 clearly labeled with the name of this Agreement in the Description of Operations block;
  - 9.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance); and
  - 9.1.3 properly endorsed and have the agent's signature, and phone number.
- 9.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. 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 Office of Risk Management. No officer or employee, other than City's Office of Risk Management, shall have authority to waive this requirement.
- 9.3 If the City does not receive copies of insurance endorsements, then by executing this Agreement, Consultant certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.
- 9.4 The City's Office of Risk Management Director 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 subject to mutual agreement by Consultant.
- 9.5 Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, at Consultant's sole expense, insurance coverage written on a per claim, per occurrence, or policy limit 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:

<b><i>INSURANCE TYPE</i></b>	<b><i>LIMITS</i></b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000

a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability *e. Independent Contractors	general aggregate, or its equivalent in Umbrella Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, error, or omission in professional services.  Coverage shall be maintained and in effect for no less than two years following the completion of the professional services.
6. Commercial Crime Coverage	\$ 1,000,000 Limit Per Occurrence on First Party Coverage
7. Cyber Liability	\$5,000,000
*If applicable	

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

9.7 If a loss results in litigation between the City and Sedgwick, 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  
Attn: Office of Risk Management  
P.O. Box 839966  
San Antonio, Texas 78283-3966

9.8 Consultant's insurance policies must contain or be endorsed to contain the following provisions:

- Include City and its officers, officials, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the included insured performed under contract with City but excluding coverage for the negligent acts or omissions of City. The endorsement requirement is not applicable for crime, workers' compensation, and professional liability policies;
- Consultant shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability, and auto liability policies in favor of City; and

Should any of the described policies be cancelled, non-renewed or there is a material change in coverage prior to the expiration date thereof, notice will be delivered to Sedgwick in accordance with policy provisions. Sedgwick will then notify the City within ten (10) calendar days.

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

## **ARTICLE X**

### **INDEMNIFICATION**

- 10.1 **Consultant covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and**

against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant's negligence or willful misconduct in performing 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the 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. In addition, Consultant agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise the City in writing 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 and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.
- 10.3 Defense Counsel - 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.
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount

or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

## **ARTICLE XI**

### **ASSIGNMENT AND SUBCONTRACTING**

- 11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.
- 11.2 It is City's understanding, and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Injury Management Organization, Trinity Review Services, and KeySource Investigations. Any deviation from this subcontractor list, whether in the form of deletions, additions, or substitutions in accordance with the terms of this Agreement shall be approved by Director in writing which approval shall not be unreasonably withheld, delayed or conditioned.
- 11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject 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. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director.
- 11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director which consent shall not be unreasonably withheld, delayed or conditioned. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.
- 11.5 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.



## **ARTICLE XII**

### **INDEPENDENT CONTRACTOR**

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

## **ARTICLE XIII**

### **SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

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

## 13.2 Definitions.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

### 13.3 SBEDA Program Compliance – General Provisions

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

- 13.3.1 Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Consultant's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
- 13.3.2 Consultant shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant or its Subcontractors or suppliers;
- 13.3.3 Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
- 13.3.4 Consultant shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

- 13.3.5 Consultant shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
- 13.3.6 Consultant shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- 13.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Consultant's Subcontractor / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- 13.3.8 Consultant acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Consultant for this project has registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and Consultant has represented to City which primary commodity codes each Subcontractor will be performing under for this contract. City recommends all Subcontractors to be registered in the CVR. For more information, please see link: <http://www.sanantonio.gov/SBO/Compliance>.

13.4 SBEDA Program Compliance – Affirmative Procurement Initiatives.

- 13.4.1 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, Consultant affirms that if it is presently certified as an SBE (see Small Business Enterprise definition), Consultant agrees not to subcontract more than **49%** of the contract value to a non-SBE firm.
- 13.4.2 M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Consultant affirms that if it is presently certified as an M/WBE (see Minority/Women Business Enterprise definition), Consultant agrees not to subcontract more than **49%** of the contract value to a non-M/WBE firm.
- 13.4.3 M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Consultant agrees to subcontract or self-perform at least **fifteen percent**

(15%) of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). If the Prime Consultant is a certified M/WBE firm, then the Consultant is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime Consultant does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

13.4.4 The Subcontractor/Supplier Utilization Plan attached hereto as **Attachment C** which Consultant 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 Consultant 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.

13.4.5 In the absence of a waiver granted by the SBO, failure of Consultant to attain a subcontracting goal for SBE, M/WBE and AABE participation in the performance of this Agreement or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of this Agreement and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, under this Agreement or by law.

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

Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

- 13.6 Prompt Payment. Upon execution of this contract by Consultant, Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Consultant's reported subcontract participation is accurate. Consultant shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new City contracts shall be issued to the Consultant until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.
- 13.7 Violations, Sanctions and Penalties. In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:
- 13.7.1 Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
  - 13.7.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
  - 13.7.3 Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
  - 13.7.4 Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
  - 13.7.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions, and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance; and
4. Disqualification of Consultant or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

#### **ARTICLE XIV AMENDMENTS**

- 14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. Chief Financial Officer shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation, or law.

#### **ARTICLE XV COMPLIANCE**

- 15.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 15.2 Consultant will have in place policies and procedures regarding the transfer, removal, disposal, and re-use of electronic media, to ensure appropriate protection of electronic protected health information (e-PHI), including but not limited to:
  - a) Ensuring the confidentiality, integrity, and availability of all e-PHI created, received, maintained or transmitted, ensuring that data is encrypted at rest and in transit;
  - b) Identifying and protecting against reasonably anticipated threats to the security and integrity of e-PHI information;

- c) Implementing security controls based on an appropriate risk assessment;
- d) Ensuring that all relevant system components are patched in a timely manner;
- e) Providing proof of an implemented an information security program to ensure the privacy, safety, and integrity of PHI, such as data protection solutions that proactively classify and protect data from unauthorized access, transfer, or use;
- f) Reviewing and modifying Consultant's security measures used to protect e-PHI when there are changes to Consultant's operating environment;
- g) Protecting against reasonably anticipated, impermissible uses or disclosures;
- h) Ensuring system access reviews are performed quarterly.

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



## ARTICLE XVI

### **INTELLECTUAL PROPERTY**

16.1 Consultant shall pay all royalties and licensing fees necessary for performing its obligations under this Agreement. 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, trademarks, trade secrets, materials and methods used in the project. 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.

16.2 Upon receipt of notification that a third-party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, Consultant will immediately:

Either:

16.2.1 Obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be; or

16.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and

16.2.3 Reimburse the City for any expenses incurred by the City 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.

16.3 Consultant further agrees to:

16.3.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement;

16.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and

16.3.3 Indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

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

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

16.3.6 The liability claimed shall not have arisen out of the City's negligent act or omission; and

- 16.3.7 The City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

## **ARTICLE XVII**

### **NONWAIVER OF PERFORMANCE**

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

## **ARTICLE XVIII**

### **LICENSES/CERTIFICATIONS**

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

## **ARTICLE XIX**

### **LAW APPLICABLE & LEGAL FEES**

- 19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 19.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between City and Consultant arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 19.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the

event of litigation, each party hereby waives its right to payment of attorneys' fees.

## **ARTICLE XX** **LEGAL AUTHORITY**

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

## **ARTICLE XXI** **PARTIES BOUND**

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

## **ARTICLE XXII** **CAPTIONS**

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

## **ARTICLE XXIII** **CONFIDENTIAL INFORMATION**

- 23.1 Consultant shall secure the confidentiality of records and information that Consultant may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting City's or its authorized representatives' right of access to records or other information under this Agreement.
- 23.2 No reports, information, project evaluation, project designs, data or other documentation developed by, given to, prepared by or assembled by Consultant under this contract shall be disclosed or made available to any individual or organization by Consultant, other than as expressly permitted by this Agreement, without the prior written approval of the City.
- 23.3 If Consultant receives inquiries regarding documents within its possession pursuant to this contract, Consultant shall immediately forward such request to the City for disposition.

## **ARTICLE XXIV** **SEVERABILITY**

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

## **ARTICLE XXV** **STATE PROHIBITIONS ON CONTRACTS**

- 25.1 This Article only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
  - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.
- 25.2 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.
- 25.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

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

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract.

City hereby relies on Company's verification. If found to be false, City may terminate this contract for material breach.

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

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

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

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

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

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

**ARTICLE XXVI**  
**PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS**  
**WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

**ARTICLE XXVII**  
**CONFLICT OF INTEREST**

27.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

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

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

**ARTICLE XXVIII**  
**EXECUTION IN COUNTERPART**

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

**ARTICLE XXIX**  
**AUTOPEN OR ELECTRONIC SIGNATURE**

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

**ARTICLE XXX**  
**PROHIBITED CONTRIBUTIONS**

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

**ARTICLE XXXI**  
**INCORPORATION OF ATTACHMENTS**

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

**Attachment A** City’s Request for Proposals (**RFP**) 24-129; RFx 6100018200, Self-Insured Workers’ Compensation Third Party Claims Administration, Related Services & Claims Administration Software

**Attachment B** Consultant’s Price Schedule submitted in response to City’s Request for Proposals (RFP) 24-129; RFx 6100018200 (the “**Price Schedule**”)

**Attachment C**     Consultant’s Subcontractor/Supplier Utilization Plan submitted in response to City’s RFP 24-129; RFx 6100018200 (the “**Subcontractor/Supplier Utilization Plan**”)

**Attachment D**     **Medical Case Management Protocol**

**Attachment E**     Consultant’s Proposal submitted in response to City’s RFP 24-129; RFx 6100018200 prepared July 2024 (the “**Proposal**”)

**ARTICLE XXXII**  
**ENTIRE AGREEMENT**

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

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

**CITY OF SAN ANTONIO**

**SEDGWICK CLAIMS MANAGEMENT  
SERVICES, INC.**

\_\_\_\_\_  
(Signature)

Printed Name: **Ben Gorzell**

Title: **Chief Financial Officer**

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney