

STATE OF TEXAS

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**FUNDING AGREEMENT  
FOR CONTRACTOR CAPACITY  
BUILDING & BONDING  
ASSISTANCE PROGRAM**

COUNTY OF BEXAR

This Funding Agreement For Economic Development Activities (this "Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_ day of \_\_\_\_\_, 2022 and the San Antonio Economic Development Corporation (hereinafter referred to as "SAEDC"), a 501(c)(3) non-profit acting by and through its Executive Director, both of which 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.

**I. DEFINITIONS**

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

- 1.1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.1.2 "SAEDC" is defined in the preamble of this Agreement and includes its successors.
- 1.1.3 "Director" shall mean the acting director of City's Economic Development Department.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the Term of this Agreement shall commence upon execution of this Agreement and shall run concurrent to the term of that certain Professional Services Agreement entered into between SAEDC and Consultant (the "PSA"), dated \_\_\_\_\_, attached hereto as Attachment A, or for two years, whichever is sooner.

2.2 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.

**III. SCOPE OF SERVICES**

3.1 SAEDC agrees to provide the services described in this Article III. entitled "Scope of Services" in exchange for the payment described in Article IV. entitled "Payment to SAEDC."

3.2 SAEDC shall collaborate with the City in focusing on the achievement of the following goals during the Term of this Agreement:

- A. SAEDC shall establish and implement a Contractor Capacity Building & Bonding Assistance Program.
- B. SAEDC shall contract with a consultant knowledgeable in bonding and related technical assistance as selected through a competitive process to ensure the performance of the scope of services as outlined in the PSA, attached hereto as Attachment A.

C. SAEDC shall require consultant to report to City staff as necessary for the success of the Program, as further outlined in Attachment A.

3.3 All work performed by SAEDC 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 SAEDC, 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 SAEDC'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.

#### **IV. PAYMENT TO SAEDC**

4.1 In consideration of SAEDC'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 SAEDC an amount equal to SIX HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$600,000.00) for the entire term of the Agreement, to be paid to SAEDC and distributed as follows:

- 4.1.1 ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000) to be utilized for contracting with a consultant to perform Contractor Capacity Building & Bonding Assistance Program Administrative services as outlined in Attachment A in two installments:
  - a. FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000) payable upon execution, for year 1 of the Agreement, as identified in the FY 22 City General Fund.
  - b. FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000) payable upon extension of year 2 of the Agreement, if exercised, to be identified in the FY 23 City General Fund, subject to City Council approval.
- 4.1.2 FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$500,000) shall be payable to SAEDC, as identified in the FY 22 City General Fund, to be utilized as a revolving fund to offset bonding assistance needs of Contractor Capacity Building & Bonding Assistance Program participants as directed in Attachment A.

4.2 No additional fees or expenses of SAEDC shall be charged by SAEDC nor be payable by City with respect to the Contractor Capacity Building & Bonding Assistance Program. Total payments to SAEDC 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 the San Antonio City Council by passage of an ordinance therefore. The City recognizes that the SAEDC may raise additional funding through third party contributions or grants to cover additional expenses and/or build the revolving pool of funds to offset bonding needs on behalf of Program participants pertaining to Contractor Capacity Building & Bonding Assistance Program.

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

## **V. OWNERSHIP OF DOCUMENTS**

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

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

## **VI. RECORDS RETENTION**

6.1 SAEDC 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 SAEDC 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, SAEDC shall retain the records until the resolution of such litigation or other such questions. SAEDC 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 SAEDC to return said documents to City prior to or at the conclusion of said retention.

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

## **VII. TERMINATION**

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

7.2 Termination Without Cause. This Agreement may be terminated by either party 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:

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

7.5 Defaults With Opportunity for Cure. Should SAEDC 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. SAEDC shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SAEDC fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another entity 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 entity against SAEDC'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.

7.6 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.

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

7.8 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, SAEDC 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 SAEDC 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 SAEDC of any and all right or claims to collect moneys that SAEDC may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

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

## VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or 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 Attn: Director  
Economic Development Dept.  
P.O. Box 839966  
San Antonio, TX 78283

If intended for SAEDC, to:

SAEDC  
Attn: Executive Director  
P.O. Box 839966  
San Antonio, TX 78283

## **IX. NONDISCRIMINATION**

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

## **X. INSURANCE**

10.1 Prior to the commencement of any work under this Agreement, SAEDC will provide a certificate of insurance to the City's Economic Development Office and City Clerk's Office, which evidences Employee Dishonesty coverage in the amount of \$600,000 less a reasonable deductible to be agreed by the City. The City will be added as a loss payee. The original completed Certificate(s) of Insurance shall be furnished to the City's Economic Development Office and City Clerk's Office, and clearly labeled "*Funding Agreement for Capacity Building and Bonding Assistance Program*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's Economic Development Department and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 SAEDC's financial integrity is of interest to the City; therefore, subject to SAEDC's right to maintain reasonable deductibles in such amounts as are approved by the City, SAEDC shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAEDC's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with A.M. Best rating of no less than A- (VII).

### **SAEDC SHALL BE INSURED TO THE EXTENT REQUIRED BY STATE LAW**

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion,

revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). SAEDC shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.5 herein within 10 days of the requested change. SAEDC shall pay any costs incurred resulting from said changes.

10.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, SAEDC shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if SAEDC knows of said change in advance, or ten (10) days' notice after the change, if the SAEDC did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio  
Economic Development Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.6 If SAEDC fails to maintain the aforementioned insurance, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of SAEDC to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon SAEDC's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order SAEDC to stop work hereunder, and/or withhold any payment(s) which become due to SAEDC hereunder until SAEDC demonstrates compliance with the requirements hereof.

10.7 Nothing herein contained shall be construed as limiting in any way the extent to which SAEDC may be held responsible for payments of damages to persons or property resulting from SAEDC's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that SAEDC's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.9 SAEDC subcontractors will be required to have the same insurance requirement(s) as SAEDC. SAEDC will be responsible for overseeing their subcontractor's insurance requirements. SAEDC will have the option to provide insurance for all subcontractors providing services under this Agreement by adding an endorsement on their insurance policy naming such subcontractors as additional insureds on SAEDC insurance policy to the full extent needed to cover the subcontractors for the types and amounts of insurance set out in Article 10.1 above. Subcontractors shall provide SAEDC with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

## **XI. RESERVED**

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 SAEDC shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement.

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

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

12.4 Except as otherwise stated herein, SAEDC 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 the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, SAEDC shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor SAEDC, assignee, transferee or subcontractor. 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 SAEDC 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 SAEDC 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 SAEDC shall in no event release SAEDC from any obligation under the terms of this Agreement, nor shall it relieve or release SAEDC from the payment of any damages to City, which City sustains as a result of such violation.

## **XIII. INDEPENDENT CONTRACTOR**

13.1 SAEDC covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that SAEDC shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants that the doctrine of respondent superior shall not apply as between City and SAEDC, 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 ventures between City and SAEDC. 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 SAEDC under this Agreement and that the SAEDC has no authority to bind the City.

## **XIV. RESERVED**

## **XV. RESERVED**

## **XVI. AMENDMENTS**

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. Subject to and contingent upon appropriation of funds for any increase in expenditures by the

City, the Director shall have authority to execute amendments on behalf of City without further action by the San Antonio City Council up to a total not to exceed contract value of \$25,000.00 and the Assistant City Management responsible for the Economic Development Department shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council up to a total not to exceed contract value of \$50,000.00.

## **XVII. SEVERABILITY**

17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties 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.

## **XVIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM**

18.1 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”). 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.

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

**Please note** to be SBEDA eligible a Prime or Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency AND must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area.

**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, SAEDC through their consultant, which is the Program administrator and referred to as “Consultant”, affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), they agree not to subcontract more than 49% of the contract value to a non-SBE firm.

The Subcontractor/Supplier Utilization Plan 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.

In the absence of a waiver granted by the SBO, failure of the SAEDC to comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

18.3 SBEDA Program Compliance – General Provisions - As SAEDC 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. 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. SAEDC voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, SAEDC further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

5. SAEDC shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. SAEDC 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.

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

18.4 Violations, Sanctions and Penalties - In addition to the above terms, SAEDC acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

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

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

1. Suspension of contract
2. Withholding of funds
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance
4. Refusal to accept a response or proposal
5. Disqualification from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

18.5 Prompt Payment - Upon execution of this contract by SAEDC, SAEDC 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 SAEDC's reported subcontract

participation is accurate. SAEDC 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 SAEDC's noncompliance with these prompt payment provisions, no new CITY contracts shall be issued to the SAEDC 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.

#### **XIX. COMPLIANCE**

19.1 SAEDC shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

#### **XX. NONWAIVER OF PERFORMANCE**

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants, or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee 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.

#### **XXI. LAW APPLICABLE**

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

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

#### **XXII. LEGAL AUTHORITY**

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

#### **XXIII. PARTIES BOUND**

23.1 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.

#### **XXIV. CAPTIONS**

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

**XXV. INCORPORATION OF EXHIBITS**

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

**XXVI. RESERVED**

**XXVII. ENTIRE AGREEMENT**

27.1 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 XVI. Amendments.

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

**EXECUTED and AGREED** to this \_\_\_\_ day of June.

CITY OF SAN ANTONIO

SAN ANTONIO ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Erik Walsh  
City Manager

\_\_\_\_\_  
Executive Director

Approved as to Form:

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

**Attachment A**

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
CONTRACTOR CAPACITY BUILDING &  
BONDING ASSISTANCE PROGRAM ADMINISTRATION**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Professional Services Agreement for Contractor Capacity Building & Bonding Assistance Program Administration (this “Agreement”) is entered into by and between the San Antonio Economic Development Corporation (“SAEDC”), a 501(c)(3) non-profit acting by and through its Executive Director, and Jim Swindle dba Alamo Surety Bonds (“Consultant”) a for-profit corporation acting by and through its authorized representative, both of which may be referred to as the ‘Party’ or collectively as the “Parties.”

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

**I. DEFINITIONS**

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

1.1 “SAEDC” is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 “Consultant” is defined in the preamble of this Agreement and includes its successors.

1.3 “Director” shall mean the SAEDC’s Executive Director.

## II. TERM

2.1 The term of this Agreement shall be for one (1) year period beginning upon full execution of the Agreement. SAEDC shall have the option to renew for an additional one (1) year period should funds continue to be available, however, SAEDC may terminate a contract at any time if funds approved by the City Council of the City of San Antonio (“City”) for the purposes of this Agreement are restricted, withdrawn, not approved or service is unsatisfactory.

## III. SCOPE OF SERVICES

3.1 Consultant agrees to provide professional services for City’s Contractor Capacity Building & Bonding Assistance Program Administration (the “Program”) as outlined in Exhibit A. Scope of Services, attached and incorporated hereto for all purposes, in exchange for the compensation described in Article IV. Compensation.

3.2 In connection to the Program, SAEDC will provide Consultant access to a \$500,000 revolving collateral pool (the “Fund”) for the sole purpose of providing funding for eligible Small, Minority, and Women owned Business Entities (“S/M/WBEs”) in need of assistance to cover costs related to City bonding requirements in order to bid on a City solicitations. The Fund will revolve once Program participants who receive Program funding successfully complete their City contract and repay the SAEDC for Program funds expensed. The Fund shall be kept separate and apart from Consultant’s personal account(s). Consultant agrees that it shall not permit or cause to be permitted amounts in the Fund to be commingled with any other monies not intended for the purpose stated above. Consultant agrees that any funds to-be spent from this Fund shall be approved by the Director or their designee.

3.3 Consultant understands and agrees that under no circumstances is Consultant permitted to write bonds for participating S/M/WBEs utilizing Fund resources.

3.4 Consultant understands and agrees that Program participants shall be permitted to choose any surety, resource provider, or advisor, to include but not limited to CPAs, insurance brokers, or bankers. Consultant agrees that any fee, commission, kickback, or other thing of value that Consultant receives in connection with the Agreement shall be in alignment with industry standards and market rates and shall not serve as a detriment to the Program funds or to Program participants. Any finding by City that the Consultant violated this provision, as determined solely by Director, shall constitute a breach of contract and subject Consultant to the termination provisions contained in Article **VII. Termination.**

3.5 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. SAEDC shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. SAEDC 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, SAEDC shall have no obligation to terminate and may withhold payment for any unsatisfactory work, should SAEDC elect not to terminate.

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

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement SAEDC agrees to pay Consultant an amount not to exceed One-Hundred Thousand Dollars and No Cents (\$100,000.00) as follows:

4.1.1 – Fifty Thousand Dollars and No Cents (\$50,000) for year 1 of Program

4.1.2 – Fifty Thousand Dollars and No Cents (\$50,000) for year 2 of Program

4.2 Upon meeting the deadlines for the following deliverables and receipt of a valid and complete invoice, the aforementioned compensation will be disbursed as follows:

4.2.1 Year 1 of Program

<b>Deliverables</b>	<b>Due, following Execution</b>	<b>Disbursement</b>
<ul style="list-style-type: none"> <li>• Program Manual (with detailed policy and operational procedures)</li> <li>• Intake process form</li> <li>• Executed MOUs with all partner agencies</li> <li>• Bonding checklist</li> <li>• Comprehensive marketing and enrollment plan</li> <li>• Course catalog</li> </ul>	On or before 30 days	\$10,000
<ul style="list-style-type: none"> <li>• Commence enrollment</li> <li>• Program launch with minimum of 5 participants enrolled</li> </ul>	On or before 60 days	\$10,000
<ul style="list-style-type: none"> <li>• Submit 1<sup>st</sup> monthly report progress report for enrolled participants</li> </ul>	On or before 90 days	\$10,000
<ul style="list-style-type: none"> <li>• Satisfactory progress towards program outcomes</li> </ul>	On or before 180 days	\$20,000

#### 4.2.2 Year 2 of Program

- a. \$12,500 quarterly upon submission of monthly reports on service to Program participants, completion of metrics, establishment of any Program amendments identified, and status of Fund disbursements in line with targets established in accordance with the Scope of Services, Exhibit A.

Invoices shall be submitted to: San Antonio Economic Development Corporation (SAEDC), copying City of San Antonio Economic Development Department, 100 W. Houston St., Suite 1800, San Antonio, Texas 78205. Invoices should include remittance or wire instructions. SAEDC shall pay such invoices by telegraphic bank transfer net of all duties and bank charges to an account specified by Consultant.

4.4 Consultant acknowledges that such fixed fee shall be sufficient for full and final compensation for all services to be performed pursuant to or associated with the Scope of Services and agrees that no additional fees or expenses of Consultant shall be charged by Consultant nor be payable by SAEDC or City. The Parties agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant for the original contract term cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all



Parties, subject to Article XV. Amendments.

4.5 Final acceptance of work products and services require written approval by SAEDC. The approval official shall be Director. Neither SAEDC nor City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

4.6 For any sum of funds paid by SAEDC later determined to have not been spent in accordance with the terms of the Agreement, SAEDC reserves the right to request return of said funds to SAEDC, which shall be returned within ten (10) working days, or shall be proportionately held from future disbursement, as decided by SAEDC, and shall immediately be placed back by SAEDC into the Program Fund. The Parties acknowledge the SAEDC commitment of funding for the Program and specifically the scope of services under this Agreement, as described in Exhibit A. While it is expected that each outcome outlined in Exhibit A is met upon program completion, SAEDC in coordination with City staff will monitor attainment toward outcomes. Should outcomes not be achieved, Consultant will submit a Corrective Action Plan to City staff within 30 days of notification, subject to approval. The Corrective Action Plan will state the cause for the deficiency and propose a plan with a specific timeline on how their outputs and goals will be met. If the Corrective Action Plan is not met in accordance with the timeline approved, SAEDC reserves the right to reduce the following quarter's disbursement in an amount proportionate to the deficiency and Consultant risks termination or non-renewal of contract.

4.7 Costs claimed under this Contract may not be claimed under a City of San Antonio agreement, or contract or grant from another agency, organization, business entity or governmental entity.

## V. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

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

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

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

## VI. RECORDS RETENTION

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

its authorized representatives.

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

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

## VII. TERMINATION

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

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

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

- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by SAEDC.

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. SAEDC 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 thirty-day cure period, SAEDC shall have the right, without further notice, to terminate this Agreement in whole or in part as SAEDC deems appropriate, and to contract with another Consultant to complete the work required in this Agreement. SAEDC shall also have the right to offset the cost of said new Agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of SAEDC to mitigate its losses to the extent required by law.

- 7.4.1 Failing to perform or failing to comply with any covenant or provision required under this Agreement; or
- 7.4.2 Performing unsatisfactorily.
- 7.4.3 Bankruptcy or selling substantially all of company's assets.

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

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

7.7 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to SAEDC or to such person(s) or firm(s) as the SAEDC may designate, at no additional cost to SAEDC, 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 SAEDC, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by SAEDC and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

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

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

## VIII. NOTICE

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

writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for SAEDC, to: SAEDC  
Attn: Director  
Department of Economic Development  
Box 839966  
San Antonio, Texas 78283-3966  
Email: Ana.Bradshaw@sanantonio.gov

If intended for Consultant, to: Jim Swindle dba Alamo Surety Bonds  
2359 Austin Hwy  
San Antonio, Texas 78218  
Email: Jimbobonds@gmail.com

## IX. NONDISCRIMINATION

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

## X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Economic Development Department and SAEDC, which shall be clearly labeled "*Professional Services Agreement for Contractor Capacity Building & Bonding Assistance Program Administration*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. SAEDC will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to SAEDC. SAEDC shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Economic Development Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 SAEDC reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent.

10.3 A Consultant's financial integrity is of interest to the SAEDC; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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:

<u>TYPE</u>	<u>AMOUNTS</u>
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: a. Premises Operations b. Products/Completed operations c. Personal/Advertising Injury d. Contractual Liability e. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$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, malpractice, error, or omission in professional services.
*6. Cyber Liability	\$1,000,000 per claim/ and \$2M general aggregate
<i>*If applicable to the scope of service</i>	

10.4 Consultant agrees to provide insurance for all subcontractors providing services under this Agreement by adding an endorsement on their insurance policy naming such subcontractors as additional insureds on Consultant's insurance policy to the full extent needed to cover the subcontractors for the types and amounts of insurance set out in Article 10.3 above. Consultant shall provide SAEDC with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by SAEDC, SAEDC shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance SAEDC at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

If intended for SAEDC, to:

SAEDC c/o City of San Antonio  
Attn: Economic Development Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name SAEDC, the City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with SAEDC, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the SAEDC or City of San Antonio where the SAEDC and City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability, and automobile liability policies will provide a waiver of subrogation in favor of SAEDC and the City.
- Provide advance written notice directly to SAEDC of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

10.8 In addition to any other remedies SAEDC may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, SAEDC shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAEDC or the City of San Antonio for liability arising out of operations under this Agreement.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of SAEDC or the City shall be limited to insurance coverage provided.

10.12 Consultant and any subcontractors are responsible for all damage to their own equipment

and/or property.

## **XI. INDEMNIFICATION**

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

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

**11.3 CONSULTANT shall advise SAEDC in writing within 24 hours of any claim or demand against the SAEDC, CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT'S activities under this AGREEMENT.**

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

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

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

shall perform all necessary work.

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

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the SAEDC, 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. Neither SAEDC or City shall be, in any event, obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees.

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

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, SAEDC 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 SAEDC 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 SAEDC, which SAEDC sustains as a result of such violation.

### **XIII. INDEPENDENT CONSULTANT**

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

### **XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM**

14.1 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.

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

**Please note** to be SBEDA eligible a Prime or Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency AND must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area. The guidelines and steps to be certified by SCTRCA are available at: <https://sctrca.org/get-certified/>

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

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

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

14.3 SBEDA Program Compliance – General Provisions - As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and,

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

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

shall be subject to advanced written approval by the Originating Department and the SBO.

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

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

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

6. 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;
7. 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;

8. 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;
9. 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
10. 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:

6. Suspension of contract
7. Withholding of funds
8. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance
9. Refusal to accept a response or proposal
10. 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).

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

## **XV. AMENDMENTS**

15.1 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 SAEDC and Consultant.

## XVI. SEVERABILITY

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

## XVII. STANDARD OF SERVICES

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

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

## XVIII. STATE PROHIBITIONS ON CERTAIN CONTRACTS

18.1 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.

18.2 "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.

### 18.3 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.

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

#### 18.4 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).

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

#### 18.5 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.

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

#### XIX. NONWAIVER OF PERFORMANCE

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

power, privilege, or remedy available to that Party under this Agreement or by law or in equity.

#### **XX. LAW APPLICABLE**

**20.1 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.**

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

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

#### **XXI. LEGAL AUTHORITY**

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

#### **XXII. PARTIES BOUND**

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

#### **XXIII. CAPTIONS**

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

#### **XXIV. INCORPORATION OF EXHIBITS**

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

Exhibit A. Scope of Services

#### **XXV. ENTIRE AGREEMENT**

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

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

**SAN ANTONIO ECONOMIC  
DEVELOPMENT CORPORATION**

**Jim Swindle dba ALAMO SURETY  
BONDS**

\_\_\_\_\_  
\_\_\_\_\_  
Executive Director

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**Exhibit A. SCOPE OF SERVICES**  
**Contractor Capacity Building & Bonding Assistance Program Administration**

The City of San Antonio (City), through the San Antonio Economic Development Corporation (SAEDC) and administered by Jim Swindle dba Alamo Surety Bonds (Consultant), shall establish and implement the Contract Capacity Building and Bonding Assistance Program (Program) to assist local small, minority, and woman-owned businesses (S/M/WBEs) seeking City contracts.

The Consultant shall provide tailored needs assessments for S/M/WBE contractors participating in this Program and create the educational, technical, and financial literacy component required for a successful program. In addition, the Consultant shall provide S/M/WBEs with one-on-one business counseling, project support if awarded a City contract, and financial support to offset City contract bonding requirement barriers. Ultimately, the Program shall ensure S/M/WBEs are receiving assistance to build their capacity and bonding limits, which should lead to an increase in the number of City contracts they are both bidding on and awarded.

For many reasons, equity is a key requirement for the Program. Over the City's history, and as reflected nationally, minority and woman-owned businesses (M/WBEs) have suffered from long-term disparities, which were made abundantly more evident during the global COVID-19 pandemic. Therefore, while the Program shall support all local small businesses, its objectives must focus on M/WBEs.

The entire scope of services for the Program is as follows below. All Program elements in the scope of services below (e.g., policies, procedures, forms, marketing information, classes, intake process, etc.) shall be pre-approved by the City's Economic Development Department before implementation.

**Section A – Participant Eligibility**

1. Participants eligible for this Program must meet the following criteria:
  - a. Place of business must be headquartered within the City.
  - b. Business must meet the definition of a Small Business Enterprise (SBE) per the Small Business Administration (SBA).
  - c. Registered in the City's Central Vendor Registry.
  - d. Performing services in the construction industry.
2. Consultant shall develop a recommended application and selection process.
3. Consultant shall verify and keep record of each participant who is granted or denied entry into the Program. This includes retaining documents verifying eligibility for each participant and available to the City upon request (e.g., CPS bill, SBE certification certificate from the South Central Texas Regional Certification Agency, Texas Secretary of State, or signed attestation).

**Section B – Education, Training, and Guidance**

1. Establish and implement a standardized intake process to assess the technical and financial strengths and weaknesses for each participant (e.g., Per Consultant's response to the City's Request for Proposal (RFP), review of the firm's company office and operations, collection and review of bond application, current bonding capacity and assessment score card). A documented and standardized action plan shall be provided to each participant based on the assessment inclusive of required classes and community partner referrals to complete.
  - a. Gather and evaluate past applications for bond requests, if available. If prior denials exist, incorporate a planned strategy for addressing and overcoming the factors that led to the denials.
  - b. Evaluate all relevant company documents to provide the assessment, including the firm's financial statements, asset allocation, capital investments, etc.

- c. Determine the participant's bonding capacity upon initial assessment to measure growth as the participant progresses and completes the Program.
2. Identify and provide educational courses and instructors focused on business financial literacy and industry best practices to improve the bonding capacity for participants (e.g., Per Consultant's response to the City's RFP, An Overview of the Surety Underwriting Process, The SBA Surety Bond Guarantee Program, Bonding Subcontracts, Financial Statement Presentation & How it Affects Bond Capacity, The Work in Progress Schedule, The "Alternate" Surety Market, Why Contractors Fail, Understanding Personal Credit & How it Affects "Bondability").
  - a. Organize and publish the classes to be offered to participants, including pre-set dates, times, and frequency of each class.
  - b. Help schedule, track, and ensure class participation and completion on behalf of the participant.
  - c. Virtual and in-person classes are allowed; however, if a firm has internet access issues, accommodations shall be provided.
  - d. All partnerships, formal or informal, are subject to approval from the City, including, but not limited to execution of a memorandum of understanding.
3. Identify and provide a list of referral services and existing resources to all participants (e.g., LiftFund, SBA, City's Mentor-Protégé Program, Texas Department of Transportation, bookkeepers, CPAs, lenders).
  - a. Organize and publish business community stakeholder partnerships and services offered for the participants.
  - b. Help schedule, track, and ensure referrals are completed on behalf of the participant.
  - c. Virtual and in-person services are allowed; however, if a firm has internet access issues, accommodations must be provided.
4. Provide personalized one-on-one business guidance and consultation services for each participant (e.g., Per Consultant's response to the City's RFP, job cost breakdown & analysis, cash flow analysis, obtaining financing, funds administration process overview and requirements, dispute resolution, job status reports, complete financial statement analysis, credit evaluation, line of credit, and recommendations to improve credit and firm financial elements).
  - a. Each participant shall receive a minimum of 15 hours of consultation through their duration in the program. Consultant shall meet with each participant at least once monthly.
  - b. Total consultation hours shall be at least 450 hours annually.
  - c. Help schedule, track, and ensure contractor participation and completion on behalf of the participant.
5. Assist participants in submitting bids to City of San Antonio and non-City of San Antonio solicitations, including but not limited to, understanding solicitation language and requirements, cost estimating, subcontractor management, bid documents, bonding requirements, etc.
  - a. Educate participants on how to find bidding opportunities with local, state, federal and private agencies.
6. Assist participants awarded City of San Antonio contracts, including but not limited to, ensure project timeline is met, project requirements are completed adequately, reports requested are submitted, subcontractor are paid on time, etc.

### **Section C – Financial Assistance**

1. Per federal, state, and local law, manage and disburse funds from a \$500,000 revolving pool of funds, or greater should funds be added in the future due to Consultant fundraising efforts, to participants for the sole purpose of offsetting bonding requirements on City contracts.
  - a. The pool of funds shall be kept separate and apart from Consultant's personal account(s). Consultant agrees that is shall not permit or cause to be permitted amounts in the Fund to

be comingled with any monies not intended for the purpose stated above. All funds spent shall be approved by the City/SAEDC.

- b. Provide the City with standardized monthly reports detailing funds expensed or planned to-be expensed due to pending City contract award, as well as an estimated timeline in which the revolving pool of funds will be replenished per participant assisted.
  - c. Ensure that all funds paid to participants are allowable expenses and are eligible to be replenished in the revolving pool of funds.
  - d. Provide a two-year plan to fundraise and grow the revolving pool of funds, through entities such as banks.
  - e. Work with the participant, San Antonio Economic Development Corporation, and City to ensure monies owed back to the revolving pool of funds is captured.
  - f. Establish funding maximums per participant to protect and spread funds to meet outcomes defined below (e.g., 40% of bonding required or a maximum of \$200,000, whichever is the lowest value).
2. Develop annual targets of fund disbursements based on participant enrollment and awarded contract duration with the City, total amount of funds available in the collateral pool, and current estimated costs to obtain bonds, in which all dollar ranges of City contracts will be eligible for bonding assistance (e.g., 10 participants can be supported on contracts with an estimated award value less than \$500,000, 15 participants can be supported on contracts with an estimated award value of \$500,000 to \$1,000,000, etc.).
  3. Create a chart for Program participants that provides context regarding the bond fees based on credit rating and value of contract. (e.g., 3% for 630-705 credit rating or based on contract amounts).
  4. Work with surety companies to develop underwriting criteria that will protect Program resources and will allow maximum participation for participants requiring bonding assistance.
    - a. The Program will be an “open surety market” allowing participation by any willing surety.
  5. Monitor participant completion of City contract requirements related to bonding and assist with obstacles encountered in those transactions.
  6. The City shall have authority to inspect Consultant’s compliance with funds administration as listed above.

#### **Section D – Outcomes**

1. Provide tailored services, as identified under Section B, for at least 30 participants to complete the Program annually.
2. Provide collateral pool funding to offset City bonding requirements, as identified under Section C, for at least 10 participants annually, unless the funding is already allocated.
  - a. Program default rate shall be no greater than five percent (5%) for all years combined under the Consultant’s administration.
3. Meet the following minimum aspirational goals:
  - a. Small Business Enterprise – 100%
  - b. Emerging Small Business Enterprise – 50%
  - c. Minority Business Enterprise – 75%
  - d. African American Business Enterprise – 30%
  - e. Asian American Business Enterprise – 15%
  - f. Hispanic American Business Enterprise – 30%
  - g. Woman Business Enterprise – 50%
  - h. Veteran Owned Business Enterprise – 5%
4. Targeted outreach to financial institutions and other entities to increase the collateral pool.
5. Provide standardized monthly reports to the City inclusive of all active Program participants to include the following: company name, owner name, company address, council district,

- certification status (race and gender), funding amount issued (if received), class participation and completion, City contract bids and awards, specified business industry or trade, etc.
6. Provide five (5) client success stories to the City no later than June 1 of each year.
  7. Create and provide annual surveys to participants to assess Program satisfaction regarding education, training, one-on-one consultation, and referrals. Survey shall also measure participant revenue, number of employees contract bids, contract awards, and bonding capacity increases.
    - a. Create and provide annual surveys for participants that complete the program for a four (4) year period to measure long-term success using similar indicators above.
  8. Should outcomes not be achieved, Consultant will submit a Corrective Action Plan to the City within 30 days of notification by the City, subject to approval. The Corrective Action Plan will state the cause for the deficiency and propose a plan with a specific timeline on how their outputs and goals will be met.
  9. The City shall have authority to inspect the Consultant's reported outcomes.
  10. The City shall conduct feedback sessions with all participants to determine the effectiveness of the Program and advise updates and changes to the existing processes.

### **Section E – Administrative Services**

1. Create a program manual detailing all Program policies and procedures, from participant intake to exit/graduation, including funds administration, as well as participant process flow chart and interaction/actions to be performed by community partners.
  - a. Funds administration policies and procedures should address factors such as the process of approving qualified participants to receive approval for performance/payment bonds after being awarded a City contract, developing a list of pre-approved list of surety/bonding agencies, etc.
2. Create all Program forms such as program application, standardized action plan, bond submission checklist, etc.
3. Provide and implement short-term and long-term goals, achievable milestones, and timeline to establish and administer the Program.
  - a. Program must be established with all programmatic elements developed as listed in this Scope of Services within 45 days of City Council approval of the Agreement.
  - b. Utilize Program metrics, industry standards and best practices, and feedback from the S/M/WBE business community, small business stakeholder community, City of San Antonio Finance Department, and City of San Antonio Public Works Department to annually provide recommendations to improve the program.
4. Provide Program updates periodically to City staff and City Council, Small Business Economic Development Advocacy (SBEDA) Committee, Small Business Advisory Commission, San Antonio Economic Development Corporation, and local business stakeholder organizations.
  - a. Includes the development of a presentation and execution of content.
5. Develop and execute an annual marketing plan for the Program targeting S/M/WBEs and small business stakeholder organizations. Emphasis should be placed on efforts to achieve participant aspirational goals as established in Section D.
  - a. As requested, attend City Economic Development Department events and meetings to market the Program.
6. Consultant agrees that any fee, commission, kickback, or other thing of value that Consultant receives in connection to the Agreement shall be in alignment with industry standards and market rates and shall not serve as a detriment to the Program funds or to Program participants. Any finding by City that the Consultant violated this provision, as determined solely by Director, shall constitute a breach of contract and subject Consultant to the termination provisions within the Agreement.
7. Consultant agrees and understands that Program participants shall be allowed to choose any surety, resource provider, or advisor, to include but not limited to CPAs, insurance brokers, or bankers.
8. Respond to inquiries from interested businesses and the general public.

9. Maintain good character when serving participants.
10. Maintain participant confidentiality, including but not limited to, business financial information.