

**STATE OF TEXAS**

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**COUNTY OF BEXAR**

THIS CONTRACT TO USE STATE AND LOCAL FISCAL RECOVERY FUNDS is hereby made and entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation, acting by and through its City Manager under the authority of City Ordinance 2022-02-03-0072 passed and approved on February 3, 2022, and Herospace Digital Consulting, LLC (“Contractor”), a Limited Liability Company, organized in the State of Texas, by and through its authorized representative Andrea Leal, Co-Founder and Director. Collectively, City and Contractor may be referred to herein as the “Parties”.

### **RECITALS**

**WHEREAS**, on March 11, 2021, President Joe Biden signed the American Rescue Plan Act (“ARPA”), to provide an estimated \$350 billion in emergency funding directly to state and local governments to support the nation’s recovery from the health and economic impacts of the COVID-19 pandemic; and

**WHEREAS**, under ARPA, the City of San Antonio was allocated \$326.9 million in State and Local Fiscal Recovery Funds (“SLFRF”) and was distributed an initial amount of \$127.5 million which it used to stabilize its budget and address community needs exacerbated by the pandemic; and

**WHEREAS**, pursuant to City Ordinance No. 2022-06-23-0494, the City Council authorized the expenditure of SLFRF funds in the amount further described in Article III below to support the undertaking and completion of the project in accordance with the terms and conditions of this Contract; and

**NOW THEREFORE**, the Parties hereto severally and collectively agree, and by the execution of this Contract are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

### **I. TERM**

1.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on the Effective Date as evidenced by the date of execution of this Agreement and terminate on April 30, 2024 (the “Term”).

### **II. CONTRACT PURPOSE**

2.1 The purpose of this Contract, which the City has deemed an impactful investment, is to provide Contractor with SLFRF funding to:

- (A) Provide the City with subsite design, development, and related services (the “subsite”); and
- (B) Support small business owners in expanding their digital marketing knowledge, online presence to improve their long-term resiliency and support their continued recovery from the pandemic (“small business services”) as further described in Article III and **Attachment II Project Package** (the “Project”)

### **III. SCOPE OF WORK**

3.1 The terms and conditions of this Contract apply to each and every project (further described in the **Project Schedule**, attached as **Attachment I**) for which the City engages Contractor to carry out under this Contract unless a provision or an attachment to this Contract pertaining to a specified project clearly creates an exception or states otherwise; in such cases, the exception or variance set forth in the provision or applicable attachment governs with respect to the specified project only. Wherever in this Contract, a process, restrictions, or parameters are established on Contractor’s use of Contract funds, that process, restriction or parameter applies to each project independent of the others as if a separate, distinct contract were entered into for each project, unless the Contract provision clearly indicates that the project or funding allocated to Contractor shall be considered together as a whole for the purposes of the Contract provision’s application.

3.2 Ownership of Intellectual Property

- (A) The City is and will be the sole and exclusive owner of all right, title, and interest through the world in and to the subsite and all deliverables identified in Section II, titled “Subsite and Deliverables for City”, in the Scope of Work that are created, prepared, produced, authored, edited, modified, conceived, or reduced to practice pursuant to this Contract shall be deemed "work for hire" within the meaning of the copyright laws of the United States, and ownership of all rights therein shall be solely vested in City. To the extent that any of the foregoing does not constitute “work made for hire”, Contractor hereby irrevocably assigns and conveys to the City and its successor and assigns, for no additional consideration, Contractor’s entire right, title, and interest in and to such subsite and deliverables, including but not limited to all patent, copyright, trademark (together with the goodwill symbolized thereby), and trade secret rights and the right to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto.
- (B) Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's rights as specified in subsection (A) above. If the City is unable, after reasonable effort, to secure Contractor's signature on any documents relating to such rights, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such documents and to do all other lawfully permitted acts to further the prosecution

and issuance of any patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor.

- (C) Each small businesses that participates in the Project will be the sole and exclusive owner of the final deliverables provided to such small business by Contractor under this Contract.
- (D) Contractor is and will remain the sole owner of all right, title, and interest to all intellectual property used in the performance of this Contract that is developed by, licensed to, or owned by Contractor prior to and outside of this Contract and neither City nor any small businesses that participates in the Project shall acquire any right or interest in any such property other than the irrevocable right to access and use in accordance with this Contract and only as intended to be used with each deliverable.

- 3.3 City may enforce, or waive enforcement of any of, the terms of this Contract, in connection with each project under this Contract without prejudice to any rights or remedies (whether set forth in this Contract or provided for by law or in equity) which might otherwise be available to the City in connection with the other projects under this Contract.
- 3.4 Project specific requirements for each project shall be compiled in a **Project Package**, consisting of a: (a) Scope of Work and Scorecard; (b) Budget; and (c) US Department of the Treasury (“Treasury”) Coronavirus Local Fiscal Recovery Fund Award Terms and Condition (“Grant Contract Terms and Conditions”)

All Project Package(s) are grouped together in **Attachment II** and incorporated herein as if fully set forth. All references throughout the Contract to the Scope of Work and Scorecard, the Budget, or to the Grant Contract Terms and Conditions, refer to the respective document for each project. For example, wherever in this Contract reference is made to the Budget, such reference is being made to the applicable Budget for each project.

- 3.5 The Contractor will provide, oversee, and administer all activities and services in a manner satisfactory to the City and in compliance with the applicable Scope of Work and Scorecard for each project. All work performed by Contractor hereunder shall be performed to the satisfaction of Director of the Economic Development Department (“Managing City Department” or “EDD”). 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 Contractor, which is not satisfactory to Director. City shall have the right to terminate this Contract, in accordance with Article XI. Termination, in whole or in part, should Contractor’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. City shall notify Contractor in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with Article XI and other terms in this Contract. The City at its discretion, through the Economic Development Department, may authorize additional calendar days or make reasonable adjustments to the Timeline and related deliverables, within the existing scope of this Contract, upon mutual agreement in writing, between the Director and Contractor.

#### IV. COMPENSATION

- 4.1 In accordance with ARPA, SLFRF, and the Final Rule of the SLFRF, and in consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director of the Managing City Department of all services and activities set forth in this Contract, City agrees to pay Contractor a total Contract amount not to exceed FIVE HUNDRED THIRTY-TWO THOUSAND SIX HUNDRED FIFTY DOLLARS \$532,650 ("SLFRF Funds"), in accordance with the applicable Budget for the Project, to be paid to Contractor as follows:
- (A) The first distribution of \$213,060 shall be following execution of this Contract by both parties.
  - (B) The second distribution of \$79,897.50 shall be following submission of subsite draft.
  - (C) The third distribution of \$79,897.50 shall be following the subsite being moved to live production.
  - (D) The fourth distribution of \$79,897.50 shall be following submission of proof that 125 one-hour consultations have been completed unless deliverable metric amount has been adjusted as agreed to in writing between before parties (see 3.5 above).
  - (E) The fifth funding distribution of \$79,897.50 shall be following submission of proof that all one-hour consultations have been completed and all small business websites have been built.
- 4.2 Prior to disbursement of funding from the City, Contractor shall submit a detailed invoice of incurred expenses to the City. The invoice should indicate if the funds are related to Project funding, or for Administrative Costs pursuant to the Budget. The City may withhold compensation disbursements from the Contractor if the Director reasonably believes that the Contractor (1) has not complied with any obligations under this Contract, the Grant Terms and Conditions, (2) the Contractor has breached any representations and warranties under this Contract, (3) the submitted expenditures are not in accordance to the approved Budget (4) the expenses are not considered Allowable Expenses, (5) the expenses have not been incurred, and/or (6) the proof of expenses provided by the Contractor are not adequate to confirm that the expenditure meets the requirements of this Contract. Contractor acknowledges and agrees that the City will not make a reimbursement to the Contractor for expenses that are or will be reimbursed by another funding source, including but not limited to another federal, state, or local government agency.
- 4.3 In no event shall City be liable for any expense of Contractor not eligible, allowable, or in accordance with this Contract. In the event the compensation is not used for the purposes authorized under and/or in accordance with the terms and conditions of this Contract or found to be in violation of any provisions under this Contract, Contractor agrees to refund any and all amounts to City which were not authorized or used in accordance with the terms and conditions within this Contract within thirty (30) calendar days of being notified by City.

- 4.4 City shall not be obligated nor liable under this Contract to any party, other than Contractor, for payment of any monies or provision of any goods or services.
- 4.5 Contractor understands and agrees compensation is provided to Contractor through federal funds allocated to City under ARPA and appropriated to Contractor under SLFRF. Contractor agrees that the City has no obligation under this Contract to provide funding to Contractor out of City's General Fund. If the City does not receive sufficient funds to make payments pursuant to this Contract or if the award of ARPA/SLFRF Grant Funds to the City is reduced, then City, at its sole discretion, may elect to terminate this Contract or reduce the **Scope of Work** and compensation associated with the applicable project. City shall notify Contractor in writing of its determination within a reasonable time.

**V. SLFRF FUNDING CONDITIONS; FISCAL RESPONSIBILITY;  
COST REIMBURSEMENT**

- 5.1 In order to receive the funding provided for in Article IV of this Contract, Contractor must agree and/or satisfy the following conditions:
- A) The use of SLFRF Funds is solely for costs incurred that are necessary to carry out the activities listed in the Scope of Work and in accordance with the Budget.
  - B) The use of SLFRF Funds is for eligible costs that are incurred between the Effective Date of this Contract and April 30, 2024.
  - C) Contractor is explicitly barred from utilizing SLFRF Funds for any ineligible activities, including, but not limited to, reductions in taxes, deposits into pension funds or other reserves, debt service, replenishing financial reserves, or the use in satisfaction of settlements or judgments.
  - D) Contractor may not use SLFRF funds that conflict with or contravene the purpose of the American Rescue Plan Act (ARPA).
  - E) Any costs that are determined by subsequent audit to be unallowable are subject to repayment by the Contractor to the City in accordance with Article IV above and 2 CFR 200.410.
  - F) If Contractor receives a refund or credit for any cost for which it received a payment of SLFRF Funds, Contractor shall notify City and return SLFRF Funds in the amount equal to the refund or credit to the City in a manner designated by the City, no later than thirty (30) calendar days following receipt of such refund or credit.
  - G) Contractor will determine prior to engaging in the Projects and expending SLFRF Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Projects.
  - H) Contractor understands and agrees that the funds disbursed under this award may only be used in compliance with Section 602(c) of the Social Security Act and Treasury's regulations implementing that section and guidance. Contractor will comply with all other applicable federal statutes, regulations, reporting requirements, and executive orders, as applicable, including those outlined in the attached Attachments.

- I) If the Contractor has received other ARPA or SLFRF funds from the City or any other entity, or has received other federal funds (e.g. Coronavirus Relief Act funds, a Payroll Protection Act loan, etc.), Contractor shall not use the SLFRF Funds provided for under this Contract to pay for direct or indirect costs already covered by the other federal funding, other ARPA funds, or SLFRF fund payments.

5.2 ***Allowable Costs*** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law, including but not limited to those laws referenced in Article XIX for the proper administration and performance of the services to be provided under this Contract.* The City's payment obligation under this cost reimbursement Contract is limited to making reimbursements for Allowable Costs incurred as a direct result of City-funded services provided by the Contractor in accordance with this Contract and consistent with budgeted line items in the applicable Budget.

5.3 **Contractor's Request for Payment.** Contractor shall submit to City no later than thirty (30) calendar days after the milestones and dates detailed in the Scope of Work in a Request for Payment in the form prescribed by City, which details:

- (A) the specific costs (by category and by program account number) Contractor expensed in the previous month for the services delivered as described in Article III; and
- (B) supporting documentation of costs as may be required by the Director (e.g., original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses); and
- (C) the Program Income received or projected during the same time period.

Contractor shall submit invoices to City, in a form acceptable to City, which City shall process upon receipt and approval by Director. Original invoices shall be submitted electronically directly to the City of San Antonio, Accounts Payable section of the Finance Department to the following e-mail address: [accounts.payable@sanantonio.gov](mailto:accounts.payable@sanantonio.gov).

Contractor shall submit a copy of the invoice to the City of San Antonio, Economic Development Department liaison. Assistant Director, Ana Bradshaw, ([ana.bradshaw@sanantonio.gov](mailto:ana.bradshaw@sanantonio.gov)) in the correspondence to ensure the invoice is processed, and any additional EDD staff as directed by the EDD Director and/or his/her designee.

5.4 **City Payment.** City shall pay for eligible expenses and undisputed amounts in submitted Requests for Payments within thirty (30) calendar days of receiving a properly completed, documented, and approved Request for Payment.

5.5 **Final Request for Payment.** The Contractor shall submit to City all final requests for payment no later than thirty (30) calendar days from the expiration or early termination date of this Contract, unless Contractor receives written authorization from the Director allowing Contractor to submit a request for payment after the thirty (30) day period.

5.6 **Return of Funds.** Within ten (10) business days of City's written notification, or the Contractor becoming aware of its existence, Contractor must return to the City any funds,

credits that are on-hand or collected, or advance payments that:

- (A) exceed allowable costs incurred during the Contract term;
- (B) for which Contractor fails to deliver services as specified under the Contract;
- (C) have resulted in overpayment to Contractor;
- (D) have not been spent by Contractor strictly in accordance with the terms of the Contract; or
- (E) are not supported by adequate documentation to fully justify the expenditure.

5.7 Cost Rules.

- (A) Administrative Overhead. Administrative overhead costs may not exceed ten percent (10%) of the funding provided for each project under this Contract. More stringent administrative overhead costs limitations may be applicable due to grant regulations associated with the Contract or specific project funding. Contractor shall provide City detailed administrative costs by line item with its annual program budget for each project.
  - (B) Contractor shall establish, submit with supporting documentation and use a Cost Allocation Plan for each of Contractor's annual project budgets by the deadline established by the City. *The **Cost Allocation Plan** is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions and overhead not solely devoted to the Projects funded by this Contract. The **Cost Allocation Plan** substantiates how the costs of a program are charged to a particular cost category or to the program and ensures that the City is paying only its share of the costs for services, overhead, and staffing.*
  - (C) Contractor costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.
  - (D) Contractor shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the Director.
  - (E) The use or purchase of gift cards is not allowed and not reimbursable under this Contract.
- 5.8 Each year Contractor shall submit to the Managing City Department a form 990 or 990T no later than 30 calendar days after Internal Revenue Service (IRS) deadlines for completion. If filing an extension, Contractor shall notify the City in writing of the extension and the anticipated date of filing with the IRS. Contractor shall submit the 990 or 990T to the Managing City Department no later than 30 calendar days after Contractor files under the extension.
- 5.9 The Contractor warrants that any and all taxes that the Contractor may be obligated for, including but not limited to, federal, state, and local taxes, fees, special assessments, federal and state payroll and income taxes, personal property, real estate, sales and franchise taxes, are

current, and paid to the fullest extent liable as of the execution date and throughout the term of the Contract.

5.10 Contractor shall comply with the following check writing and handling procedures:

- (A) No signing of blank checks.
- (B) No checks made payable to cash or bearer with the exception of those for petty cash reimbursement. Petty cash checks must not exceed 1) \$100.00 maximum per check and 2) \$200.00 in aggregate per location for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed the limit. Requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.
- (C) Checks issued by City to Contractor shall be deposited into the appropriate bank account immediately or by the next business day after Contractor's receipt of each such check and shall never be cashed for purposes of receiving any of the face amount back.

5.11 Contractor shall comply with the following:

- (A) ***“Program Income”*** means Contractor earnings from activities under this Contract or from Contractor's management of funding provided or received under this Contract. Program Income includes, but shall not be limited to,
  - 1. *interest income;*
  - 2. *usage or rental/lease fees;*
  - 3. *income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and*
  - 4. *payments from clients or third parties for services rendered by Contractor pursuant to this Contract.*

Contractor must not charge fees or solicit donations from participants in any City-funded project without the prior written approval of the Director.

- (B) The Contractor must fully disclose and be accountable to the City for all Program Income. Contractor shall provide thirty (30) calendar days' written notice detailing the type, time, and place of all activities, anticipated to generate Program Income. Within thirty (30) calendar days after activity that generates program income, Contractor must submit a statement of expenditures and revenues to the Managing City Department. The statement is subject to audit verification by Managing City Department. Failure by Contractor to report Program Income as required is grounds for suspension, cancellation, or termination of this Contract.
- (C) At the sole option and upon prior written direction from the Director of the Managing City Department, Contractor will either:
  - 1. return Program Income funds to City within the timeframe that may be specified by the Director of the Managing City Department; or



2. retain Program Income funds to be added to the applicable project and used to further the eligible project objectives but only if the proposed expenditures are approved by the City; or
  3. deduct Program Income funds from the total applicable project cost for the purpose of determining the net cost reimbursed by the City. In this case, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.
- (D) Contractor must include this Section 5.11, in its entirety, in all of its subcontracts involving income-producing services or activities.
- 5.12 The City shall not be obligated to any third parties of Contractor (including any subcontractors or third-party beneficiaries of Contractor) under this Contract.
- 5.13 Contractor shall maintain a financial management and accounting records system that provides the following:
- (A) accurate, current, and complete disclosure of financial support from each federal, state and locally sponsored project and program in accordance with the reporting requirements set forth in Article X of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
  - (B) identification of the source and application of funds for City-sponsored activities. The records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
  - (C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
  - (D) identification of separate funds by funding source and project;
  - (E) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
  - (F) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
  - (G) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, and the terms of the award, grant, or contract, with the City;
  - (H) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
  - (I) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the applicable project. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed according to the expense account to which they were charged.

- 5.14 The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The City may, in its sole discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract.
- 5.15 Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. City may immediately terminate this Contract if the City finds, in its sole discretion, that Contractor's financial condition may impact performance under this Contract. The City may consider, among other things:
- (A) evidence such as the apparent inability of Contractor to meet its financial obligations;
  - (B) items that reflect detrimentally on the credit worthiness of Contractor;
  - (C) pending litigation, liens and encumbrances on the assets of Contractor;
  - (D) the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property; or
  - (E) institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Contractor. Contractor shall provide any records requested by City that City deems necessary to make such a determination.

## **VI. CONTRACT ADMINISTRATION**

- 6.1 It is the sole responsibility of Contractor to ensure compliance with all applicable federal, state, and local laws, rules, policies, and regulations in connection with this Contract, applicable to SLFRF funds, and the work performed thereunder, including, without limitation the Treasury Grant Terms and Conditions as laid out in **Attachment II**. Contractor's failure to comply with such laws or regulations may result in all or a portion of the SLFRF funds becoming subject to recoupment by the City. If all or any portion of the SLFRF funds of the Projects become subject to recoupment, the City will notify the Contractor in writing and the Contractor shall within thirty (30) days of receiving such notice, return such SLFRF funds (including both any unexpended portion and funds equal to the portion expended) and any interest earnings thereon. In addition, Contractor shall be responsible for, and hereby agrees to promptly pay or reimburse the City for all costs incurred by the City, its employees, officers and agents (including without limitation, attorneys' fees) related to or arising out of such recoupment, including without limitation costs of any related investigation, audit and/or collection efforts.
- 6.2 If any disagreement or dispute arises between the Parties that pertains to this Contract or any applicable governing rules, regulations, laws, codes or ordinances, then the City Manager, as the City representative ultimately responsible for all matters of compliance with City of San Antonio rules and regulations and the rules or regulations of ARPA/SLFRF funds, if Grant funded, shall have the final authority to render or secure an interpretation.

- 6.3 City-Supported Projects. Contractor shall publicly acknowledge that the Projects funded under this Contract are supported by the City of San Antonio, Economic Development Department. Contractor must include written acknowledgment of the City's financial support in all project-related presentations, press releases, flyers, brochures and other informational material prepared and distributed by Contractor. Contractor shall obtain the City's prior approval of the language and City marks or logos, as applicable, to be used. Any acknowledgment issued or posted by Contractor must contain the following statement: "This project is being supported by a grant authorized by the U.S. Treasury Department through the American Rescue Plan Act and allocated to the City of San Antonio from the State and Local Fiscal Recovery Funds."
- 6.4 Contractor shall use the online Contract Management System provided by the City for the purpose of submitting all Contract related documents, including, but not limited to, quarterly reports, budgets, budget revisions and requests for payment.
- 6.5 The City may, during normal business hours, inspect the operating facility used by the Contractor for the administration of this Contract and may require safety or security measures such as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment funded by this Contract.
- 6.6 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions, including, but not limited to:
- (A) Roster of current Board Members (name, title, address, telephone number and e-mail address);
  - (B) Current and any amendments to Bylaws and Charter;
  - (C) Terms of Officers;
  - (D) Schedule of anticipated board meetings for current Fiscal Year; and
  - (E) Board Agendas or approved meeting minutes upon request.
- 6.7 Contractor must have or shall comply with the following regarding personnel management:
- (A) An employee ethics or integrity policy that outlines a) the requirements for employees to conduct themselves in an ethical manner consistent with the values of the Contractor; and b) the process for identifying, investigating, and enforcing potential breaches of the policy.
  - (B) Internal project management procedures to mitigate the risk of theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to reasonably prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary.
  - (C) The employee ethics policy and the project management procedures will be provided to the Managing City Department upon request by the Managing City Department.

- (D) Contractor shall immediately notify the City if any unethical, illegal, or potentially fraudulent activity involves or is related to funds provided by the City and shall provide the City with timely updates on any investigation or inquiry into the activity.
- (E) Contractor shall conduct its own risk assessment for the City's financial exposure under the terms of this Contract and from that assessment determine whether criminal background checks should be required for personnel and/or contractors. Should Contractor determine that background checks are necessary to protect City's financial interest, Contractor shall provide documentation showing that all of Contractor's staff members and/or contractors have cleared a criminal background check within 30 days of execution of this Contract.
- (F) The Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- (G) Chief Executive Officers (CEOs), directors and other management positions may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, ("Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives may be co-workers in the same project but only in non-supervisory roles.
- (H) Contractor represents and warrants that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all licensing, training, and competency standards promulgated by relevant authoritative or professional bodies. The Contractor will provide the City with the names and license registration of any employees of Contractor regulated by state law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- (I) Contractor must include written job descriptions in personnel folders for each position in the organization funded through this Contract. Job titles and descriptions in the applicable project Budget that affect a salary or range increase may not be changed without the prior written approval of the Director of the Managing City Department. Contractor understands that City funding is subject to availability of revenue as stated in Article IV of this Contract.

6.8 The following applies to equipment or intellectual property that was purchased or created with City funds:

- (A) Ownership. The City shall own all tangible property, including but not limited to, vehicles, equipment and furniture, purchased with funds received through the City. The tangible property shall, at the City's sole option, be delivered to the City upon the expiration or termination of this Contract. The Contractor must relinquish and transfer possession of and, if applicable, title to tangible property without the requirement of a court order. Tangible property that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. No tangible property purchased with City funds

may be disposed of without receiving prior written approval from the Managing City Department.

- (B) Contractor shall maintain records for and provide an annual inventory of tangible property purchased with City funds, to include:
  - 1. A description of the item, including the model and serial number, if applicable;
  - 2. The date of acquisition, cost and procurement source, purchase order number, and vendor number;
  - 3. An indication of whether the item is new or used;
  - 4. The vendor's name (or transferred from);
  - 5. The location of the property;
  - 6. The property number shown on the property tag; and
  - 7. A list of disposed items and disposition.
- (C) Contractor shall safeguard, maintain and fully insure all City-funded property against fire, loss and theft. The Contractor is also solely responsible for reporting and replacing with like property all lost, stolen, missing, damaged, or destroyed property purchased or leased with City funds. All replacement property will be treated in the same manner as property purchased with City funds. All lost, stolen, missing, damaged and/or destroyed property shall be reported to law enforcement agencies as appropriate. The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the property having been lost, stolen, missing, damaged and/or destroyed.

The report submitted by the Contractor to the Managing City Department must include:

- 1. A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- 2. A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
- 3. A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

6.9 Contractor shall comply with the following regarding City-funded travel:

- (A) Travel costs are allowable if:
  - 1. they are approved in the budget;
  - 2. supported by detailed documentation, for example, conference costs to include itineraries and documentation certifying conference attendance;
  - 3. travel costs (including per diem rates) are do not exceed those allowed under the City's travel policies and conform to the reimbursement rates under the United States General Services Administration; and
  - 4. transportation fares are at economy class rates.

- (B) Mileage reimbursement rates must not exceed the City's policy for mileage reimbursement and must comply with IRS rules. To be eligible for mileage reimbursement, the employees must
1. possess a valid Texas Driver's License and liability insurance as required by law; and
  2. record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep the record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City.

Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

6.10 Leadership Training. Contractor represents that each of its board members, executive directors, chief executive officers and chief financial officers, as applicable, have received training within the last two years, or will receive training within the first quarter of execution of this Contract, covering the key legal, fiscal and ethical responsibilities of its leadership, including the responsibility to:

- (A) Have a working knowledge of, and facilitate the implementation/enforcement of, policies and programs;
- (B) Take an active part in the budget review and planning process;
- (C) Use fair, independent judgment and due care in conducting the business of the organization;
- (D) Comply with conflict-of-interest guidelines and requirements;
- (E) Understand and exercise the duties of care and of loyalty to the organization;
- (F) Promote financial accountability so as to prevent fraud, waste and abuse; and
- (G) Participate in key personnel matters to ensure due process, compliance with laws, and responsible leadership.

6.11 The Contractor shall ensure only Synchronous Instruction and Services are provided as part of the Projects under this Contract. Asynchronous Instruction or Services provided as part of the Projects will not be eligible for reimbursement without the prior written approval of the Director of the Managing City Department. Synchronous Instruction and Services means live, scheduled, interactive classes and services conducted either in person or virtually, between Contractor staff and clients in real-time.

## **VII. AUDIT**

7.1 If Contractor expends \$750,000 or more of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contractor must complete an independent audit and submit the audit report within the earlier of:

- (A) thirty (30) calendar days after receipt of the auditor's report(s); or
- (B) nine (9) months after the end of Contractor's fiscal year; or
- (C) nine (9) months after the expiration or early termination of this Contract.

Contractor must furnish the Managing City Department a copy of the corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within 30 calendar days of receipt of the audit report or upon submission of the corrective action plan to the auditor.

If Contractor is notified of federal, state, or local entities that have conducted program reviews and/or audits of the Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within 10 calendar days of receipt of the report.

7.2 If Contractor expends less than \$750,000 of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contractor must complete and submit an audited financial statement(s) within the earlier of:

- (A) nine (9) months following the end of Contractor's fiscal year; or
- (B) nine (9) months following expiration or early termination of this Contract.

The financial statement must include the following 1) a balance sheet and income statement prepared by a bookkeeper, 2) a cover letter signed by Contractor attesting to the correctness of the financial statement, and 3) a schedule of receipts and disbursements by budgeted cost category for each project funded by the City.

7.3 The City may conduct or have an audit conducted or conduct a review of the use of funds and documentation associated with this Contract. City is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. Contractor must make available to City all accounting and project records.

7.4 Contractor, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, must make available the books, records, documents, reports, and evidence with respect to all matters covered by this Contract for a minimum period of five (5) years or whatever period is determined necessary based on the Records Retention guidelines established by applicable law for this Contract. The records shall be maintained for the required retention period, except if there is pending litigation or if the audit report has not been accepted, then the Contractor shall retain the records for as long the City requires retention. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

- 7.5 If an audit or examination determines that the Contractor has expended funds or incurred costs which may be inconsistent with this Contract or if the applicable state or federal governing agency raises compliance issues, then Contractor shall be notified and provided an opportunity to address the issues.
- 7.6 City shall provide Contractor written notification if reimbursed expenses or charges are disallowed by the City because of review or audit findings. The Managing City Department may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Contractor to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification. Contractor may not reduce a project's expenditures if the City opts to deduct disallowed expenses or charges from future reimbursements.
- 7.7 Any expenses for the collection of delinquent debts owed by Contractor are the sole responsibility of the Contractor and shall not be paid from any project funds.
- 7.8 If the City determines, in its sole discretion, that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Contractor pay for such audit from non-City resources.

## VIII. RECORDS AND REPORTING

- 8.1 The Managing City Department is responsible for monitoring, fiscal control, and evaluation of the Projects funded under this Contract. Contractor agrees that City may carry out monitoring and evaluation of activities to ensure Contractor's compliance with this Contract.
- (A) Contractor shall submit to the Managing City Department via the online Contract Monitoring System a report on the dates specified in the Project Timeline detailing the actual quantitative values of services delivered and reported outcomes and shall attach client-level documentation supporting the same, for the month preceding the submission. Quarterly client-level performance support documentation must be in Microsoft Excel format, or equivalent. All other performance support documentation provided as part of the quarterly performance submissions will be deemed unresponsive. If the Contract Monitoring System is unavailable, Contractor shall submit information via the alternative means established by the Managing City Department. The **Scorecard Attachments** containing projected performance measures for the entire Contract term is attached.
- (B) At such times and in such form as may be required by the Managing City Department, Contractor shall prepare and submit to the Managing City Department or the Grantor of applicable grant funds any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Contract.
- (C) Within 30 days from the expiration or termination of this Contract, Contractor shall submit all final reports and deliverables to City along with a receipt for all sums and a



release of all claims against all Projects.

The Contractor represents that all information in reports submitted to City is accurate and that supporting documentation shall be maintained. The Contractor shall, upon reasonable request, allow and facilitate interviews or discussions with its personnel, board members and project participants.

- 8.2 Contractor shall not disclose information pertaining to the Projects or other information and materials prepared for, provided by, or obtained from City, which is marked “confidential” or for which City informs Contractor is “confidential,” including, without limitation, reports, records, information, project evaluations, project designs, data, and other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations under this Contract. Contractor shall protect the Confidential Information and shall take the necessary steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.2, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.2 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Contract. Upon request at the expiration or termination of this Contract, Contractor shall deliver to City all copies of materials related to the Projects, including the Confidential Information.
- 8.3 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Contractor represents that no local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.
- 8.4 Contractor shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 11.2(C) of this Contract.
- 8.5 Contractor shall comply with the City’s Administrative Directives 7.3a Data Security and 7.12 Data Governance, attached and incorporated herein for all purposes as **Attachment IV. City of San Antonio Data Policies**, for all data shared, received, and maintained in connection with this Contract.

All confidential information and other data of a disclosing party (collectively, a “Disclosing Party’s Data”) that Contractor receives, has access to, or otherwise obtains by virtue of the transactions contemplated by this Contract and any results of processing such Disclosing Party’s Data or derived in any way therefrom shall at all times remain the exclusive property of the disclosing party, and Contractor shall acquire no right or interest in such Disclosing Party’s Data other than the right to use in connection with this Contract. Confidential information and Disclosing Party’s Data shall not include any information or data that (a) was rightfully known to the Contractor prior to receiving the information from the disclosing party, as demonstrated by Contractor’s records; (b) was or becomes publicly available through no fault of Contractor or any third party under a continuing obligation of confidentiality; (c) is disclosed with the prior written approval of the disclosing party; or (d) is determined by law, regulation, or by a court with competent jurisdiction to be public information.

## **IX. INDEPENDENT CONTRACTOR**

- 9.1 Independent Contractor. Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and the City shall in no way be responsible therefor, and neither Party has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 9.2 Nothing contained in this Contract shall be deemed or construed by the Parties or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties.
- 9.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor only, and not of the City, and any and all claims that may arise from the Workers’ Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

## **X. RECORDS RETENTION AND ACCESSIBILITY**

- 10.1 Contractor 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 (the “Records”). Wherever practicable, such Records should be collected, transmitted, and stored in an open and machine-readable formats, and in a manner consistent with 2 CFR Part 200, §200.334 – 220.338 Record Retention and Access. Contractor acknowledges and agrees that retention of the Records by Contractor and City’s right to inspect the s as set forth below, are required in order to permit City’s representatives to determine with certainty Contractor’s compliance with all of Contractor’s obligations under this Contract, including, without limitation, compliance with the Treasury Grant Contract Terms and Conditions.
- 10.2 Contractor shall retain any and all documents produced as a result of services provided

hereunder for a period of five (5) years (hereafter referred to as “Retention Period”) from the date of termination of the Contract, at which time documents retained by Contractor shall be accessed upon request by the City. 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, Contractor shall retain the records until the resolution of such litigation or other such questions. City may, at its election, require Contractor to return the documents to City at Contractor’s expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents at its sole cost and expense.

- 10.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.
- 10.4 Upon at least five (5) business days’ prior notice to Contractor, Contractor shall allow designated representatives of City access to the Records at the Program site or such other location where the Records are kept during normal business hours for inspection to determine if the obligations of Contractor and the terms and conditions of this Contract are being met by Contractor. If the Records are kept in any location outside of Bexar County, Contractor shall provide access to City to inspect the Records within Bexar County, Texas. Any information that is not required by law to be made public shall be kept confidential by City. Contractor shall not be required to disclose to City any information that by law Contractor is required to keep confidential.
- 10.5 Should any good faith dispute or question arise as to the validity of the data inspected, City reserves the right to require Contractor to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Contractor.
- 10.6 The rights to access the Records shall continue through the Term of this Contract.
- 10.7 Failure to provide reasonable access to the Records to authorized City representatives shall give City the right to suspend or terminate this Contract as provided for herein, or any portion thereof, for reason of default, and to exercise City’s right to recoup all disbursed funds made to Contractor under this Contract.

## **XI. TERMINATION**

- 11.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article I. Term, or earlier termination pursuant to any of the provisions hereof.
- 11.2 Termination for Convenience. This Contract may be terminated in whole or in part by either Party for any reason. Such termination shall specify the effective date thereof, which date shall not be sooner than the 30<sup>th</sup> day following the day on which notice is sent.

- 11.3 Termination For Cause. During the Term of the Agreement, City may declare a default if Contractor fails to comply with any of the terms of this Contract. Should City determine Contractor is in default under any of the terms of this Agreement, City will notify Contractor in writing. If said default is not cured within thirty (30) calendar days from the date of such notice (herein after “Cure Period”), then City shall have the right to terminate this Contract.
- 11.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.
- 11.5 Regardless of how this Contract is terminated, Contractor 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 Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article X. Records Retention and Accessibility. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor’s sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested by City.
- 11.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Contract, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Contract through the effective date of termination. Failure of Contractor 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 Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Contract.
- 11.7 Upon the effective date of expiration or termination of this Contract, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Contract.
- 11.8 Termination not sole remedy. In no event shall City’s action of terminating this Contract, whether for cause or otherwise, be deemed an election of City’s remedies, nor shall such termination limit, in any way, at law or at equity, City’s right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.
- 11.9 Continuing Liability. Notwithstanding any exercise by City of its right of suspension or termination pursuant to this Contract, Contractor shall not be relieved of any liability to City for damages due to City by virtue of any breach by Contractor of this Contract with City.

- 11.10 Bankruptcy. If Contractor files any petition for bankruptcy, then this Contract shall automatically be deemed to have terminated one (1) day prior to the filing of the petition for bankruptcy and, upon such termination, all SLFRF funds previously disbursed to Contractor, and/or for the benefit of Contractor, under this Contract shall be repaid to City.
- 11.11 The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to termination. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.

## **XII. DEBARMENT**

- 12.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program. Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Article XIII, if, at any time during the term of the Contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.
- 12.2 Should the Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within City's sole and absolute discretion, be grounds for termination for cause.

## **XIII. NOTICES**

- 13.1 Except where the terms of this Contract expressly provide otherwise, any election, notice, or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered to the addresses set forth below and the communication is:
- delivered personally (with receipt acknowledged);
  - three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
  - upon receipt if sending the same by certified mail, return receipt requested;
  - 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; or
  - by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for City, to:

Brenda Hicks-Sorensen  
 Director, Economic Development Department  
 City of San Antonio  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966  
 Email: Brenda.hicks-sorensen@sanantonio.gov

If intended for Contractor, to:

Herospace Digital Consulting, LLC.  
 4007 McCullough Ave, Suite 210  
 San Antonio, TX 78212  
 Email: andrea@herospace.com

Notice of change of email address, mailing address, or designated representative by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

#### **XIV. NONDISCRIMINATION**

- 14.1 Non-Discrimination. As a party to this Contract, Contractor 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.
- 14.2 Advancing Racial Equity. Projects funded with State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985.
- 14.3 Title VI Requirements for Contractors under the City's Award Terms and Conditions. The subgrantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract.

#### **XV. INSURANCE**

- 15.1 No later than thirty (30) days before the scheduled work under this Contract, Contractor must provide a completed Certificate(s) of Insurance to City's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the event in the Description of Operations block;
  - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance);
  - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Economic

Development Department. No officer or employee, other than City 's Risk Manager, shall have authority to waive this requirement.

If the City does not receive copies of insurance endorsement, then by executing this Agreement, Contractor certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

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

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

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage \$500,000 per occurrence; \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$250,000 per occurrence.
5. Professional Liability (Claims Made)	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.  Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
*6. Cyber Liability	\$500,000 per claim \$500,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
*If Applicable	

- 15.4 Contractor must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Contractor and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Contractor shall provide City with subcontractor certificates and endorsements the subcontractor starts work.
- 15.5 If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Contractor must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

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

- 15.6 Contractor's insurance policies must contain or be endorsed to contain the following provisions:
- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
  - Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
  - Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and
  - Provide 30 days advance written notice directly to City of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 15.7 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor'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.
- 15.8 In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City



may order Contractor to stop work and/or withhold any payment(s) which become due to Contractor under this Agreement until Contractor demonstrates compliance with requirements.

- 15.9 Nothing contained in this Agreement shall be construed as limiting the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 15.10 Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 15.11 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 15.12 Contractor and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

#### **XVI. INDEMNIFICATION**

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

intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

- 16.3 Defense Counsel. City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 16.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.
- 16.5 Contractor agrees to abide by the following specifically regarding intellectual property rights:
- (A) Contractor shall pay all royalties and licensing fees applicable to its performance hereunder. **CONTRACTOR SHALL HOLD CITY HARMLESS AND INDEMNIFY CITY FROM THE PAYMENT OF ANY ROYALTIES, DAMAGES, LOSSES OR EXPENSES INCLUDING ATTORNEY'S FEES FOR SUITS, CLAIMS OR OTHERWISE, GROWING OUT OF INFRINGEMENT OR ALLEGED INFRINGEMENT OF COPYRIGHTS, PATENTS, TRADEMARKS, TRADE SECRETS, OR MATERIALS AND METHODS USED IN OR RELATED TO THE PROJECTS PROVIDED TO CITY. IT SHALL DEFEND ALL SUITS FOR ANY INFRINGEMENT CLAIM OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.** Further, if Contractor has reason to believe that any part of a project infringes on an intellectual property right, it shall promptly give such information to City.
  - (B) Upon receipt of notification that a third-party claims that any part of a project, or any other intellectual property, infringes upon any United States or International patent, copyright, or trademark, Contractor will use commercially reasonable efforts to

promptly and without undue delay:

- Obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow City to continue using the project or any other intellectual property as the case may be, or
- Alter the project so that the alleged infringement is eliminated.

(C) **CONTRACTOR FURTHER AGREES TO:**

- **ASSUME THE DEFENSE OF ANY CLAIM, SUIT, OR PROCEEDING BROUGHT AGAINST CITY FOR INFRINGEMENT OF ANY UNITED STATES PATENT, COPYRIGHT, TRADEMARK OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE USE AND/OR SALE OF A PROJECT UNDER THIS AGREEMENT,**
- **ASSUME THE EXPENSE OF SUCH DEFENSE, INCLUDING COSTS OF INVESTIGATIONS, REASONABLE ATTORNEYS' FEES, EXPERT WITNESS FEES, DAMAGES, AND ANY OTHER LITIGATION-RELATED EXPENSES, AND**
- **INDEMNIFY CITY AGAINST ANY MONETARY DAMAGES AND/OR COSTS AWARDED IN SUCH SUIT;**

Provided that:

- Contractor is given sole and exclusive control of the defense and all negotiations relative to the settlement thereof, but that Contractor agrees to consult with City Attorney of City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of City,
- City provides all reasonable cooperation to assist the defense of such claim,
- Such project is used by City in the form, state, or condition as delivered by Contractor and in accordance with this Agreement,
- The liability claimed shall not have arisen out of, in full or in part, City's negligent act or omission, and
- City promptly provides Contractor with written notice within 10 business days following the formal assertion receipt of any claim or threat of a claim with respect to which City asserts that Contractor assumes responsibility under this Section.

## **XVII. ASSIGNMENT AND SUBCONTRACTING**

- 17.1 Contractor shall not assign nor transfer Contractor's interest in this Contract or any portion thereof without the written consent of the City Council of San Antonio, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.
- 17.2 None of the work or services covered by this Contract shall be subcontracted without the prior written consent of the City and Grantor of the grant source, if so required by said Grantor. Any work or services for subcontracting hereunder, shall be subcontracted only by written Contract,

and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any subcontractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to subcontractors.

- 17.3 Contractor must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its subcontracts related to the work or funds under this Contract, including those referenced in Article XIX. It is further agreed by the Parties that the City has the authority to monitor, audit, examine, and make copies and transcripts of all subcontracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found Contractor failed to comply with this Section, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination.
- 17.4 Licenses and Training for Subcontractors. Contractor warrants and certifies that Contractor's subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all competency standards promulgated by relevant authoritative bodies, as applicable to the services provided hereunder.
- 17.5 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.

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

- 18.1 Contractor shall comply with the requirements of the City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No, 2010-06-17-0531, as amended), as further described in Attachment III hereto (the "SBEDA Requirements") for City funds being used in the performance and accomplishment of this Contract.

#### **XIX. COMPLIANCE WITH LAWS**

- 19.1 Contractor shall comply with all applicable federal, state and local laws, rules and regulations, codes, charters, ordinances, rules, regulations, policies, and procedures, and any and all amendments or additions to these as they may be promulgated, applicable to the services provided by, or funds received by Contractor hereunder, as directed by the City or as required in this Contract. Failure to comply with applicable laws may subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 19.2 Contractor warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work or volunteer in connection with the Program.
- 19.3 Additionally, Contractor shall comply with the following:

- (A) If using City of San Antonio General Funds, expenditures shall be made in accordance with:
1. Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities; and
  2. Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
- (B) The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988.
- (C) Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
- (D) Government Code Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>.  
The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- (E) Additionally, Contractor shall comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
1. Title VII of the Civil Rights Act of 1964, as amended;
  2. Section 504 of the Rehabilitation Act of 1973, as amended;
  3. The Age Discrimination Act of 1975, as amended;
  4. Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
  5. Fair Labor Standards Act of 1938, as amended;
  6. Equal Pay Act of 1963, P.L. 88-38;
  7. Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and
  8. All applicable regulations implementing the above laws.
- (F) The Contractor shall comply with all applicable local, state, and federal employment laws including, but not limited to:
1. worker's compensation;
  2. unemployment insurance;
  3. timely deposits of payroll deductions;
  4. filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other

than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;

5. Occupational Safety and Health Act regulations; and

6. Employee Retirement Income Security Act of 1974, P.L. 93-406.

(G) Contractor, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Contract who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States (“Undocumented Workers”). If Contractor is convicted of a violation under 8 U.S.C. Section 1324a (f), then Contractor shall repay City the amounts disbursed under this Contract for the tax year(s) during which such violation occurred. Such payment shall be made within one-hundred twenty (120) business days after the date Contractor is notified by City of such violation. City, in its sole discretion, may extend the period for repayment herein. Additionally, Contractor shall pay interest on the amounts due to City under this Article XX at the rate of two percent (2%) per annum from the date of such violation notice until paid. Contractor shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom Contractor contracts.

19.3 In addition, if Contractor received federal grant funds through this Contract, Contractor agrees to comply, as applicable to the provisions contained in **Attachment V** Appendix II to Part 200.

## **XX. NO SOLICITATION/CONFLICT OF INTEREST**

20.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract or any portion thereof upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

20.2 Contractor certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities funded through this Contract, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Contractor shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

20.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being

motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

20.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this Contract or the proceeds thereof.

20.5 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee of the City has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

## **XXI. PROHIBITED ACTIONS**

21.1 Political Activity.

- (A) Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Projects provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- (B) Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other state or local elected or appointed official.
- (C) The prohibitions set forth in Sections 21.1(A) and 21.1(B) of this Contract include, but are not limited to, the following:
  - 1. an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
  - 2. working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or

- rallies, or distributing political literature;
    - 3. coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing, or assisting at meetings or rallies, or distributing political literature; and
    - 4. using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
  - (D) To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions, which shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the contact person listed on the statement within the managing City Department. Contractor shall have each said individual sign a statement acknowledging receipt of the policy.
  - (E) Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved.
  - (F) This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.
- 21.2 Adversarial Proceedings. Contractor agrees that under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity and City may conduct an audit under Section 6.4 to confirm no such use. Contractor understands that the City may deem Contractor ineligible for consideration to receive any future funding under this Contract or under another existing or future agreement while any adversarial proceedings against the City remains unresolved. This Contract may be terminated by City under Article XI should Contractor have a pending lawsuit against City or file a lawsuit against the City during the term of this Contract. Contractor shall provide the City with reasonable notice and make a good faith effort to resolve any claims or disputes between the parties.
- 21.3 No Use of Funds for Religious Activities. Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the benefit, directly or indirectly, any such sectarian or religious facility or activity, or for the construction, operations, maintenance or administration of any sectarian or religious facility or activity.
- 21.4 Contribution Prohibitions. Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for an entity that applies for a "high-profile"



discretionary contract, as defined by the City of San Antonio Procurement Policy and Procedures Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Request for Proposal (RFP) is released, and ending on the 30<sup>th</sup> calendar day following the contract award. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response. Contractor acknowledges that the City has identified this Contract as high profile. Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signer of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

## **XXII. AMENDMENTS**

- 22.1 Except when the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be effected by amendment, in writing, executed by both City and Contractor. City Manager, or his/her designee, shall have authority to execute amendments on behalf of the City without further action of City Council. Contractor shall have the authority to execute amendments under authority granted by formal action under his/her governing body.
- 22.2 It is understood and agreed by the Parties hereto that performances under this Contract shall be rendered in accordance with the laws and rules governing ARPA and SLFRF funds as set forth this date, and the terms and conditions of this Contract.
- 22.3 Any alterations, additions, or deletions to the terms of this Contract required by changes in local, state and federal rules, regulations or laws applicable hereto are automatically incorporated into this Contract without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

## **XXIII. RELIEF FROM PERFORMANCE (FORCE MAJEURE)**

- 23.1 In addition to relief expressly granted in this Contract, Contractor may be granted relief from performance if and to the extent to the extent Contractor is prevented and/or impaired from compliance and performance by any Force Majeure Event for as long as the Force Majeure event continues and, except as otherwise provided herein, Contractor continues to use reasonable commercial efforts to avoid or remove such causes of nonperformance; and shall continue performance hereunder with reasonable dispatch whenever such cause are removed. For purposes of this Contract, a “**Force Majeure Event**” shall include an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster casualty, condemnation or other event beyond the reasonable control of Contractor. The burden of proof for such relief shall rest upon Contractor. To obtain relief based upon this Article XXIII, Contractor must file a written notice with the City Attorney’s Office for approval, specifying the Force Majeure Event and the performance under this Contract that such event is impairing.

A Force Majeure Event does not release Contractor from the repayment of any funds disbursed under this Contract.

#### **XXIV. SEVERABILITY OF PROVISIONS**

- 24.1 If any clause or provision of this Contract 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 Contract 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 Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract 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.

#### **XXV. INCORPORATION OF ATTACHMENTS**

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

Attachment I. Project Schedule

Attachment II. Project Package

Attachment III. SBEDA

Attachment IV. City of San Antonio Data Policies

Attachment V. ARPA CONTRACT PROVISIONS, 2 CFR 200.327: 2 CFR 200 Appendix II Requirements

#### **XXVI. NON-WAIVER OF PERFORMANCE**

- 26.1 Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. 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 Contract, 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 Contract 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 XXIV. Changes and 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.

## **XXVII. LEGAL AUTHORITY**

- 27.1 Contractor represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Contract and to perform the responsibilities herein required.
- 27.2 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he or she has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all terms, performances and provisions herein contained.
- 27.3 Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in its application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.
- 27.4 City will have the right to suspend or terminate this Contract in accordance with Article XI. if there is a dispute as to the legal authority, of either Contractor or the person signing this Contract, to enter into this Contract, any amendments hereto or failure to render performances hereunder.

## **XXVIII. GOVERNING LAW AND VENUE**

- 28.1 Texas Torts Claims Act. Contractor acknowledges that City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.
- 28.2 Notice of Claims. Contractor shall give City immediate notice in writing of: (i) any OSHA investigation of Contractor concerning any project; (ii) bankruptcy of Contractor or any of its affiliates; and (iii) any notice given by Contractor to its employees at the project site required under any applicable laws pertaining to contemplated job reductions at the project Site. Contractor shall submit a copy of each such notice required hereunder to City within fifteen (15) calendar days after receipt or issuance, as applicable.
- 28.3 Venue. Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created under this Contract are performable in Bexar County, Texas. Any action or proceeding to adjudicate

any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

#### **XXIX. ATTORNEY'S FEES**

- 29.1 In the event Contractor should default under any of the provisions of this Contract and the City should employ attorneys or incur other expenses for the collection of the payments due under this Contract or the enforcement of performance or observance of any obligation or agreement on the part of Contractor, then Contractor agrees to pay to City its reasonable fees of such attorneys and such other expenses so incurred by the City so ordered by a court having jurisdiction over the Parties.

#### **XXX. PARTIES BOUND**

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

#### **XXXI. CAPTIONS**

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

#### **XXXII. GENDER**

- 32.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

#### **XXXIII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 33.1 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.

This section 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.

- 33.2 "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.
- 33.3 "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.
- 33.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### **XXXIV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES**

- 34.1 This section 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.
- 34.2 "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.
- 34.3 "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).
- 34.4 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.
- 34.5 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### **XXXV. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

- 35.1 This section 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.
- 35.2 "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.
- 35.3 "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.
- 35.4 Texas Government Code §2274 (enacted by SB 19, 87th Texas Legislature, Regular Session (2021)), 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.
- 35.5 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXVI. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS PROHIBITED**

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

**XXXVII. ENTIRE CONTRACT**

- 37.1 This Contract, together with its authorizing ordinance and its exhibits, constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed

upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties, in accordance with Article XXII.

**XXXVIII. COUNTERPARTS, ELECTRONIC SIGNATURE AND DELIVERY**


38.1 This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Contract may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of applicable Texas or Federal law. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

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

**CITY OF SAN ANTONIO**

**HEROSPACE DIGITAL CONSULTING, LLC.**

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

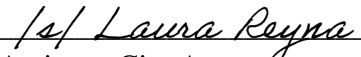
  
\_\_\_\_\_  
**Andrea Leal**  
Co-Founder and Director

\_\_\_\_\_  
Date

March 29, 2023

\_\_\_\_\_  
Date

Approved as to Form:

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

**ATTACHMENT I  
PROJECT SCHEDULE**

<b>Project</b>	<b>General Fund or Grant Source</b>	<b>Federal Assistance Listing Number</b>	<b>Project Allocation</b>
Phase II: Small Business Web Presence Implementation	American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Fund	21.027	\$532,650
<b>Total Contract</b>			<b>\$532,650</b>



**ATTACHMENT II  
PROJECT PACKET**

**(Scope of Work and Scorecard; Budget; Grant Contract and/or Terms and Conditions)  
Each to follow**

## **Scope of Work – Small Business Web Presence Implementation**

### **I. Scope of Work**

The following deliverables are included in partnership and agreement with the City of San Antonio (City) for Herospace Digital Consulting (Contractor). Contractor will create a Web Presence Program to aid San Antonio small business owners in expanding their digital marketing knowledge and online presence to improve their long-term resiliency and support the continued recovery from the pandemic.

#### **A. Small Business Web Presence Program**

1. Contractor will collaborate with the City's Information Technology Services Department and Communications & Engagement departments on the design and delivery of a subsite with a landing page and core content hosted on the City's sa.gov platform and additional custom content on Contractor's platform, as further detailed below. The online content created for the subsite and content will be owned by the City and must be transferred to City possession upon termination of the contract.
2. Contractor will meet with City's Economic Development Department (EDD) no less than every two weeks until the subsite and content have been created to the mutual satisfaction to both parties.
3. Subsite to include:
  - a. Conformance with the City's usability and accessibility standards further described in Section III below.
  - b. Questionnaire developed by Contractor to assess the current digital competency, online presence, future goals of small businesses; and
  - c. Custom created educational content to educate business owners on topics to improve their digital competency with the goal of improving the small business resiliency.
  - d. Translations of website content in English and Spanish
4. Provide one (1) hour consultations with two hundred fifty (250) small businesses, unless otherwise agreed to between EDD and Contractor in writing as referenced in section 3.5 to review the results of the questionnaire. Eligibility requirements of participating small businesses to receive a free one-hour consultation will be developed by EDD, in coordination with the Contractor, and mutually agreed to in writing.
5. Develop individualized plan of solutions based on the small business needs, goals, budget, and capacity.
  - a. Solution plan may include, as appropriate for each business, website design and development, collecting payments online, search engine optimization (SEO), social media management, pay-per-click campaigns, and/or a content strategy featuring blog writing, branding, graphic design, or other relevant areas.
  - b. Every small business owner in the program will be provided a structure of offered solutions to include a timeline and identified deliverables for each phase of the client plan.
6. Create custom online presence for seventy-five (75) small businesses following questionnaire completion and one (1) hour consultation, unless otherwise agreed to by both City and Contractor and evidenced in writing as referenced in Section 3.5 of this Contract. Eligibility requirements of participating small businesses to receive a custom

online presence will be developed by EDD, in coordination with the Contractor, and mutually agreed to in writing before the questionnaire and educational website go to live production. Custom work coordinated with small business owner, based on the results of the one-hour consultation to include, if appropriate for each small business owner based on the consultation:

- a. Small business landing page with four sections and a custom contact form; or
  - b. Small business website consisting of six webpages, including home page.
  - c. Further options to be made available to small business owners to include:
    - i. Custom content of six (6) professional photos; and
    - ii. Signature web video up to two (2) minutes in length; and/or
    - iii. Digital marketing package, including social media graphics and one (1) month of social media consultation of 30 minutes per week/2 hours per month.
  - d. Small business owners will also receive:
    - i. Training manual to update their website text
    - ii. One (1) year of complimentary website hosting
      - Option to renew website hosting at \$100/year
    - iii. Five (5) email accounts
7. Prior to the launch of the questionnaire, EDD and Contractor will coordinate criteria of selecting business owners in greatest need of website development with EDD staff following questionnaire development.
- a. Priority will be for small businesses with the least capacity to act upon the Contractor solutions plan internally.
  - b. Selection for the seventy-five (75) websites will be on a first-come, first-served basis for small businesses that meet the established eligibility requirements.

## **B. Marketing and Outreach**

1. Contractor will contribute to the creation of an outreach and marketing plan with EDD Staff to raise awareness about the subsite. The City agrees that it is responsible for implementing Program marketing under the plan and for making the decisions on which businesses qualify to participate in the Program.

## **II. Deliverables, Reporting, and Metrics**

In accordance with Section IV. Timeline, Contractor shall:

1. Design and develop the subsite.
2. Design and develop digital competency questionnaire.
3. Design and develop audit report generated from questionnaire.
4. Provide EDD staff with website design mockups and wireframe or equivalent acceptable to City for approval.
5. Create educational video content for subsite:
  - a. two (2) social media educational videos in English and Spanish
  - b. two (2) website educational videos in English and Spanish
  - c. two (2) SEO educational videos in English and Spanish
  - d. two (2) videos in English and Spanish on how to complete the questionnaire
  - e. two (2) b-roll videos
  - f. two (2) video bumpers for video posts

6. Produce the following educational written articles for subsite on a timeline to be mutually agreed upon by both parties:
  - a. three (3) social media educational articles;
  - b. three (3) website educational articles; and
  - c. three (3) content/SEO educational articles.
7. Translate subsite and contents, questionnaire, and articles into Spanish.
8. Analyze audit reports created from two hundred fifty (250) completed small business questionnaires, unless otherwise agreed to in writing between EDD and Consultant as referenced in Section 3.5 of this Contract.
9. Conduct two hundred fifty (250) one (1) hour consultations with questionnaire respondents providing them with individualized feedback and a solution plan to create or enhance their online presence.
10. Build customized websites, landing pages, or other internet or social media pages, for seventy-five (75) small businesses.
11. Conduct surveys of all program participants:
  - a. seeking input from participants on whether the Projects improved business practices, revenue, or business growth; and
  - b. seeking input from participants to determine if they achieved 80% of their improvement plan goals.
12. Progress report due quarterly on program progress, status of City subsite and small business owner questionnaire development, number of videos created, articles written, number of questionnaires completed, number of consultations conducted, number of websites in development or created for participants.
  - a. Progress report must also include demographic data on program participants, to include:
    - i. Race/ethnicity of owner(s);
    - ii. Gender of owner(s);
    - iii. Age of owner(s);
    - iv. Operating zip code;
    - v. Council district; and
    - vi. Business type.
  - b. Quarterly report should also include written narrative detailing success stories on the progress of the program and how Contractor achieved the program goals with specific examples from participating businesses.

### **III. Accessibility Requirements**

Contractors who develop and/or modify City of San Antonio (City) websites, must meet a fundamental requirement that all information and communications technology (ICT) is accessible to, and usable by, people with disabilities. This meets City obligations under the Americans with Disabilities Act (ADA) of 1990 (as amended 2008) and the Rehabilitation Act of 1973, sections 503 and 508. Under Section 508, the City must provide employees and members of the public with disabilities comparable access to ICT as people who do not have disabilities.

Contractors must adhere to the following standards for ICT: Section 508 Standards and Web Content Accessibility Guidelines (WCAG) 2.1 Level AA when applicable based on the Scope of Work (SOW). These standards are established as minimum requirements and Contractors are

expected to deliver access at higher levels when technically feasible. As part of the Contractor's effort to ensure access for individuals with disabilities, the Contractor agrees to:

1. Create baselining efforts with accessibility by providing a Voluntary Product Accessibility Template (VPAT). Implement proposed remediation solutions with the Project Manager and City's ADA Coordinator. Define and agree to mutually agreed sprint capacity.
2. The Contractor shall develop or configure, test, stage, and release accessibility updates by applying iterative processes utilizing accessibility methodology and a frequent release cycle. This may include various testing stages incorporating testers with various types of disabilities (physical, sensory, cognitive, etc.)
3. Accessibility deliverables must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) Project Manager and City's ADA Coordinator or designate.
4. All deliverables must be submitted in a format approved by the Agency contract manager.
5. If the deliverable cannot be provided within the scheduled timeframe, the Contractor is required to contact the Project Manager and City's ADA Coordinator in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
6. A request for a revised schedule must be reviewed and approved by the Project Manager and City's ADA Coordinator before placed in effect. Contract Terms and Conditions may dictate remedies, costs, and other actions based on the facts related to the request for a revised schedule.
7. The City will complete a review of each submitted deliverable within specified working days for the date of receipt.
8. A kickoff meeting will be held at a location and time selected by the City where the Contractor and its staff will be introduced to the City.
9. The Contractor assures the City:
  - a. Content and coding updates implemented throughout the lifetime of the contract maintain accessibility.
  - b. If accessibility is not maintained, a remediation solution and mutually defined and agreed sprint capacity will be developed with the Project Manager and City's ADA Coordinator when accessibility barriers are identified within the first 12 months after customer receipt of final product.
  - c. Timeline for remediation must be within the contract length.
  - d. Additional accessibility testing will be required to ensure conformance with accessibility standards and guidelines.
  - e. Implementation of accessibility remediation solutions required due to content and coding updates will be at no cost to the customer.

#### IV. Timeline

April 6, 2023	<ul style="list-style-type: none"> <li>• Program commences following execution of contract</li> <li>• Development of subsite and questionnaire begin</li> </ul>
June 23, 2023	<ul style="list-style-type: none"> <li>• Subsite draft due</li> </ul>
July 31, 2023	<ul style="list-style-type: none"> <li>• Quarterly report due</li> </ul>
October 18, 2023	<ul style="list-style-type: none"> <li>• Subsite, content, and questionnaire moved to live production</li> </ul>
October 30, 2023	<ul style="list-style-type: none"> <li>• Quarterly report due</li> </ul>
Date performance dependent	<ul style="list-style-type: none"> <li>• Subsite, content, and questionnaire are live and Contactor is actively working with program participants, as reflected in quarterly progress reports</li> </ul>
January 31, 2024	<ul style="list-style-type: none"> <li>• Quarterly report due</li> </ul>
April 30, 2024	<ul style="list-style-type: none"> <li>• Final Program report due</li> <li>• 100% of consultations completed</li> <li>• All services for selected small business completed</li> </ul>

The Parties understand and agree that progress on the Projects depends, in part, on engagement by small businesses and on the scheduling and completion of events to be organized through marketing partners of the City. The target metrics for the project and timeline above assumes good faith efforts by the Contractor and the City.

## PERFORMANCE MEASURE SCORECARD

<b>Agency Name:</b>	Herospace Digital Consulting, LLC (Contractor)					
<b>Program Name</b>	Web Presence Program					
<b>Amount Requested:</b>	\$532,650					
<b>Contract Term:</b>	13 months					
<b>Measure Description</b>	<b>Status %</b>	<b>Q1 (Apr-Jun)</b>	<b>Q2 (Jul-Sep)</b>	<b>Q3 (Oct-Dec)</b>	<b>Q4 (Jan-Mar)</b>	<b>Target # Achieving the Measure</b>
Design and deliver subsite for small business digital competency	Y/N					Y
Year 1	0%					250
Develop a dynamic questionnaire to assess the current digital competency of small businesses	Y/N					Y
Year 1	0%					\$100,000
Develop an audit report generated from questionnaire	Y/N					Y
Year 1	0%					\$100,000
Create four (4) educational videos in English and four (4) educational videos in Spanish						8
Year 1	0%					\$100,000
Produce nine (9) educational articles on digital marketing for small businesses.						9
Year 1						
Translate subsite and contents into Spanish.	Y/N					Y

Year 1						
Translate questionnaire into Spanish.	Y/N					Y
Year 1						
Translate nine (9) articles into Spanish.						9
Year 1						
Conduct 250 one-hour consultations with small businesses.						250
Year 1						
Build customized websites, landing pages, or other internet or social media presences for 75 small businesses.						75
Year 1						
<b>Data and Reporting Sources</b>						
<b>Notes/Comments:</b>						



<b>Term of Contract</b>	<b>Amount</b>
Website and Questionnaire Development, 1-hour consultations	\$355,000
Front end development	
Back end development	
Questionnaire logic tree	
Questionnaire report design & development	
250 one-hour consultations with small businesses	
Educational Content Creation	\$63,650
Educational videos in English & Spanish	
Educational website copywriting	
Social media profile and cover photos	
Design templates	
Custom websites/landing pages (75)	\$114,000
Landing pages, as appropriate	
Five-page website, as appropriate	
Digital marketing package, as appropriate	
<b>Contract Total</b>	<b>\$532,650</b>

### Sample

	<b>Businesses Cost</b>	<b>Price</b>	<b>Quantity</b>	<b>Totals</b>		
	Landing Page	\$900	60	\$54,000		
	Standard Website	\$2,500	15	\$37,500		
	Standard Website (optional)	\$500	10	\$5,000		
	One Time DM Package	\$750	20	\$15,000		
	DM Package Optional	\$500	5	\$2,500		
	<b>Total Cost</b>			<b>\$114,000</b>		

**Grant Terms and Conditions**

**U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY  
FUND AWARD TERMS AND CONDITIONS**

**ATTACHMENT III**  
**SMALL BUSINESS ECONOMIC DEVELOPMENT**  
**ADVOCACY (SBEDA) PROGRAM**

**Economic Development ARPA Funding Small Business FY 2023**

A. SBEDA Program

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

B. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

**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, CONTRACTOR affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

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

The Subcontractor/Supplier Utilization Plan which CONTRACTOR submitted to City with its response for this contract and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE

Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain 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.

### C. Contract Requirements and Commitment

Contractor understands and agrees the following provisions shall be requirements of this Agreement and Contractor, in acknowledging these requirements, commits to comply with these provisions.

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

### D. SBEDA Program Compliance – General Provisions

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

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

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

#### E. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE,

M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

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

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

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

#### F. Commercial Nondiscrimination Policy Compliance

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

third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### G. Prompt Payment

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

#### H. Definitions

**Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the degree of aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are distinguished from contract payments, the first, only reflect the anticipated dollar amounts the second, reflect actual dollar amounts that are paid to a contractor under an awarded contract).

**Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these certification services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the Ordinance No. 2016-05-19-0367 Section III.E.6.

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

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

**Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.



**Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

**Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

**Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and

documentation of consultations with trade associations and CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

**HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult that is of legal majority age.

**Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

**Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

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

**M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or

- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

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

**M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods

& Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

**Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

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

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the SBEDA Program.

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

**Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.

**Suspension** – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

**Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

**ATTACHMENT IV**  
**City of San Antonio Data Policies**  
**(To be attached separately)**

**ATTACHMENT V**  
**ARPA CONTRACT PROVISIONS**  
**2 CFR 200.327: 2 CFR 200 Appendix II Requirements**

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Contractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.



- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or Contractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in

connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- (J). 200.323 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (K) Prohibition on certain telecommunications and video surveillance services or equipment.
- (a) Recipients and Contractors are prohibited from obligating or expending loan or grant funds to:
    - (1) Procure or obtain;
    - (2) Extend or renew a contract to procure or obtain; or
    - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
      - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
      - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
      - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) See Public Law 115-232, section 889 for additional information.
- (d) See also 2 CFR 200.471.

(L) Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all SLFRF Funds including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.