

**HENRY B. GONZALEZ CONVENTION CENTER  
BUSINESS CENTER LEASE AGREEMENT**

## TABLE OF CONTENTS

RECITALS.....	4
I. Definitions .....	4
II. Grant of Lease .....	7
III. Term.....	8
IV. Use .....	9
V. Rent and Taxes.....	11
VI. Operation, Maintenance and Repairs .....	12
VII. City's Maintenance and Repairs .....	14
VIII. Construction .....	17
IX. Personal Property .....	18
X. Advertising and Signage .....	19
XI. Intellectual Property .....	20
XII. Sustainability .....	20
XIII. Fire and Other Damage/Condemnation.....	20
XIV. Force Majeure.....	21
XV. Audit and Records Retention .....	21
XVI. Termination.....	23
XVII. Notice .....	24
XVIII. Insurance.....	25
XIX. Indemnity .....	28
XX. Small Business Economic Development Advocacy Program .....	29
XXI. Assignment and Subcontracting .....	29
XXII Independent Contractor .....	30
XXIII. Conflict of Interest.....	31
XXIV. Amendments.....	31
XXV. Attorney's Fees.....	31
XXVI. Severability .....	31
XXVII. Nonwaiver of Performance .....	32
XXVIII. Licenses/Certifications.....	32

XXIX. Compliance .....	32
XXX. Captions .....	32
XXXI. Gender .....	33
XXXII. Law Applicable .....	33
XXXIII. Legal Authority .....	33
XXXIV. Parties Bound.....	33
XXXV. Incorporation of Exhibits .....	33
XXXVI. Counterparts, One Agreement .....	33
XXXVII. Entire Agreement .....	34

**HENRY B. GONZALEZ CONVENTION CENTER  
BUSINESS CENTER LEASE AGREEMENT**

**STATE OF TEXAS           §**  
  §  
**COUNTY OF BEXAR       §**

This Henry B. Gonzalez Convention Center Business Center Lease Agreement ("Agreement") is entered into pursuant to Ordinance No. 2023-08-, passed and approved on August , 2023, by and between the City of San Antonio ("City") and **SK3 Logistics Business Solutions, LLC** ("Tenant"), together referred to as the "Parties," for the lease of space located in the Henry B. Gonzalez Convention Center, 900 E. Market Street, San Antonio, Bexar County, Texas 78205 ("Convention Center") to be used as a business center.

**RECITALS**

A. City has an existing lease agreement for the operation of a business center at the Convention Center and such lease agreement expires the sooner of December 31, 2023 or the effective date of this Agreement.

B. City and Tenant desire to enter into this Agreement under the terms, as follows:

**I. Definitions**

1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 "Convention Center" is defined in the preamble of this Agreement.

1.3 "Customer", whether used in the plural or singular, includes licensees, exhibitors, attendees, and other users of the services provided by City and Tenant.

1.4 "Director" is the Director of City's Convention & Sports Facilities Department, or her designee.

1.5 "Gross Margin" means the excess Gross Sales over costs of goods or services received.

1.6 "Gross Sales" means the aggregate amount of all sales, trades, barter

and other transactions, at or from the Premises by Tenant, including, but not limited to, fees charged and services performed by Tenant for all daily sales, trades, barter or other transactions of business, to include, but not limited to, (i) the total sales, commissions and fees from the Premises' sales, services, operations, trades, barter, other transactions of business, and any and all other business of Tenant, whether from items pre-packaged and assembled on the Premises or off the Premises (e.g., services of products and services for Customers in quantities beyond the capacity of the Business Center, but performable off-Premises and either delivered to Customers on the Premises or elsewhere), and (ii) those sales, commissions and fees received off the Premises, including delivery orders, that Tenant agreed to sell, service, trade, barter, transact or otherwise provide, in whole or in part, through the Premises, including in-person, by telephone or fax, or other means of electronic or other transmission, including before, during and after Tenant's hours of operation, for cash, credit or otherwise, of every kind, name or nature, regardless of when or whether paid for or not, together with (iii) the aggregate amount of all exchanges of goods, wares, merchandise or services for like property or services, including bartering, at the selling price or servicing value thereof, as if the same had been sold for cash, or the fair and reasonable value thereof, whichever is greater, and (iv) offsets on stamps (and meter mail costs, less sales taxes which have actually been paid by Tenant directly to the appropriate taxing authorities, and returns of merchandise (unless a re-stocking fee is charged, which fee is to be included herein.)

1.7 "Exclusive Products and Services" shall mean the following:

1.7.1- Retail packing and shipping services; UPS, DHL, FedEx or any other related overnight delivery and/or courier services; lockers for package receiving; retail sales of USPS metered mail;

1.7.2- Retail printing services, including color and black and white photocopying, digital printing; digital imaging, binding, on-line printing/document access; mounting, laminating; large format printing, and the production of banners;

1.7.3- Retail mailbox services; and retail package receipt, storage, forwarding, and management services.

(a) Minimum Required Services

- Shipping Services – domestic and international shipping, multiple carriers (UPS, DHL, FedEx, USPS) (as opposed to drayage provided by general services contractors)
- Packaging Services – various sizes, values and weights
- Receiving, Storage and Delivery Services – receipt, storage and delivery of packages
- Mailbox and Postal Services –metered mail, mailbox rental, forwarding, holding, mail check (call in)

- Facsimile (Fax) Services – inbound and outbound, domestic and international
- High speed photocopy services featuring duplexing, collating, stapling, black and white, color, oversize and zoom.
- High speed photocopy services for color copies to include various sizes, enlargements/reductions/sorting, editing
- Finishing Services – binding/unbinding/rebinding, laminating, hand collation, machine stapling, unstapling, cutting, folding, padding, hole punching/drilling
- Custom Printing Services – layout, special insertions, labels, transparencies, business cards, stationery, NCR forms

(b) Additional Services and Products, to include but not limited to:

- Word Processing, Typing and Design Services – resume preparation, cover letters, flyers, signs, letterhead, forms, etc.
- Instore Computer Use – internet access, software (Apple and PC products, MS Office, desktop publishing)
- Laminating – various sizes, luggage tags
- Digital Services – digital scanning, various flash drives/memory cards/email
- Photo Processing and Printing
- Notary Services
- House Accounts
- Litigation Copying
- Rubber Stamps and Seals

Other Conventional Office Supplies and Sundries – padding (bubble wrap/loose fill and packing), styrofoam), boxes/specialty boxes, paper/specialty papers (resume/card stock, pastels/brights, certificates), pads, envelopes/mailers/tubes, pens/pencils/markers/highlighters, crayons, chalk, erasers, labels, badges, dry erase markers/erasers/cleaner, correction tape/fluid, glue/glue sticks, staplers/staples/staple removers, push pins/tacks, fasteners, stamp pads, rubber bands, tape (scotch/masking/packing), velcro fasteners, self-stick notes/flags, transparencies, forms books (receipts, invoices, etc.), pencil sharpeners, paper punches, adhesive strips, , digital storage devices (memory cards/flash drives), cable ties/cord clips, media covers/storage, binders/folders/portfolios/report covers, indexes/tab dividers/sheet protectors, scissors, rulers, paper/binder clips, index cards/boxes, business card holders, desktop organizers/accessories, easel tablets, poster boards, clipboards, stencils, adhesive letters/numbers, , labelers, certificate frames, calculators/calculator ribbon, ink/toner/ribbons, wrapping paper, twine, postage scales/meters, computer software, film, batteries, calendars, planners/appointment books and refills, , extension cords, power cords, surge protectors, utility knives/replacement blades, sign holders, and cleansers/applicators, . “Nonexclusive Products and Services” shall mean: rental of equipment, such as computers, copiers, , etc.

1.8 "Nonexclusive Products and Services" shall mean: rental of equipment, such as computers, copiers, etc.

1.9 "Premises" is defined in Section 2.1 of this Agreement.

1.10 "Tenant" is defined in the preamble of this Agreement and includes its successors, assigns, contractors, subcontractors, licensees, concessionaires, employees, agents and any other parties conducting business at the Premises, if said contractors, subcontractors, licensees, concessionaires and any other parties are approved by City.

1.11 "Tenant's Books and Records of Receipts" means those books, records and receipts of Tenant and Tenant's contractors, subcontractors, licensees, concessionaires and any other parties conducting business at the Premises, regardless of whether or not said contractors, subcontractors, licensees, concessionaires and any other parties are approved by City, which documents Tenant agrees to secure from said parties and provide to City, upon written request and at no cost to City. These books, records and receipts include, without limitation, the records of all daily receipts and deposits, and all books, accounts, memoranda, and all or any other documents of Tenant indicating and substantiating the amount of any expenditure and receipts related to the foregoing: deposit slips, bills, vouchers, payroll records, purchase orders, and other pertinent records that, under recognized accounting and industry practices, contain information bearing upon or relating to cost, income, gross sales, or subsidy.

## **II. Grant of Lease**

2.1 Grant of Operations. For and in consideration of the fees, covenants and promises contained in this Agreement to be kept, performed and observed by Tenant, City leases to Tenant, and Tenant accepts from City, a lease of space in which to operate and maintain a business center, designated by City through its Director, as shown and described in **Exhibit A** Business Center Diagram ("Premises" or "Business Center"), attached and incorporated into this Agreement, for the purpose of providing Customers access to daily business tools, as well as other services on a non-exclusive basis.

(iii) City's Superior Interest. Tenant acknowledges that the rights granted under this Agreement are limited in nature, being a personal right to operate and maintain as a Business Center only, and that City does not purport to convey any permanent real property interest in the Premises, but rather the right to use and occupy the Premises for the period of time set forth in Article III Term. City reserves the right to enter the Premises at any time for the minimum time necessary to prevent an accrual of any rights in any person other than such rights established prior to and pursuant to the rights granted under this Agreement and also for: (i) the purpose of asserting City's superior fee interest; (ii) the exercise of City's superior rights; (iii) inspecting the Premises; (iv) verifying that fire, safety and sanitation regulations and other provisions of this Agreement are being adhered to by Tenant; or (v) for the prevention of waste of utilities on the Premises.

2.2 Relocation. City reserves the right to relocate Tenant to an alternate space within the Convention Center, which is suitable for the use of Tenant, should such relocation become necessary, only if Tenant agrees in writing to such relocation based on its physical requirements or specifications as determined by Tenant. In the event of such relocation, this Agreement shall continue in full force and effect with the new location substituted for the old location. City shall use its best efforts to avoid any unnecessary inconvenience to Tenant.

2.3 Tenant will not occupy or use, nor permit any portion of the Premises to be occupied or used for any business or purpose which is not the same as the purpose stated in Section 2.1, or is unlawful in part or in whole, or deemed to be disreputable in any manner, or is in violation of any laws, codes, rules, regulations or ordinances of any governmental or quasi- governmental entity. Tenant must procure at its sole expense any permits and licenses required for the transaction of its business in the Premises and otherwise comply with all laws, codes, rules, regulations and ordinances of any governmental or quasi-governmental entity.

2.4 Quiet Enjoyment. City covenants that Tenant, upon paying rent and performing all covenants and requirements contained in this Agreement, shall and may peacefully and quietly have, hold and enjoy the Premises. City agrees to use good faith efforts to protect Tenant from interference or disturbance by third persons.

2.5 Tenant will maintain the Premises in a clean and healthful condition and will comply with all laws, codes, rules, regulations and ordinances of any governmental or quasi- governmental entity, with reference to use, conditions, or occupancy of the Premises. Tenant will conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, interfere with, annoy or disturb City's business operations or Customers.

2.6 No Guaranty of Customer Levels. City does not guarantee any amount of Tenant sales or customer traffic to the Premises during the Initial Term or any Renewal Terms. Additionally, Customers will not be required to use any of Tenant's services and may use any provider they choose.

2.7 City agrees not to lease any space to any other tenant that will offer, sell, or provide any of the Exclusive Products or Services.

2.8 City further agrees that during the Agreement's term, City shall not place, or allow the placement of, any additional parcel/overnight delivery boxes or non-UPS lockers for package receiving for overnight delivery services with the common area of the Convention Center or in any retail space with a square footage less than 7,500 square feet.

### **III. Term**

3.1 The term of this Agreement begins September 1, 2023 ("Effective Date") and ends August 31, 2028 ("Initial Term").

3.2 Renewal. If not in default at the end of the Initial Term and by tendering to City one hundred twenty (120) days' prior written notice, Tenant may seek to renew and extend all of the terms and conditions of this Agreement upon renewal for a 4-year term. Additional City Council approval shall not be required unless modifications are made to the Term or the Ren paid under Article V. In determining whether or not to grant such renewal, City may consider, among other factors, the following:

3.2.1 Past contractual performance during the Initial Term of this Agreement, including:

- (a) Quality of services provided; and
- (b) Continued compliance with this Agreement.

3.2.2 Timely payment of the Monthly Base Rent and Percentage Rents.

#### **IV. Use**

4.1 Business Center. 1,185 square feet of the Premises, as depicted in **Exhibit A Business Center Diagram**, shall be used by Tenant as a business center solely for the purpose of providing Customers the Exclusive Services and Non-Exclusive Products and Services stated in Sections 1.8 and 1.9. The Premises is accepted by Tenant in its "AS-IS, WHERE-IS, WITH ALL FAULTS CONDITION."

4.2 Exclusive Products and Services. Tenant agrees to provide to customers the Exclusive Products and Services defined herein. Tenant understands and agrees that the list of Exclusive Products and Services may be modified by Tenant (i) presenting justification in writing to Director, including the proposed changes and pricing structure, at least sixty (60) days in advance of any proposed changes becoming effective, and (ii) securing written approval of changes from City, acting in its sole discretion, as determined by Director, prior to any possible effective date of a change.

4.3 Non-Exclusive Products and Services. Tenant agrees to provide to customers the Non-Exclusive Products and Services defined herein. Tenant understands and agrees that the list of Non-Exclusive Products and Services may be modified by Tenant presenting a request to Director, including the proposed changes and pricing structure, and modified by approval of Director orally in advance of such changes, with such request and approval confirmed in writing within five (5) business days after such request.

#### **4.4 Pricing**

4.4.1 In connection with the services offered, Tenant agrees to the pricing in **Exhibit E Pricing Schedule** for the Exclusive Products and

## Services and Non-Exclusive Products and Services offered.

- 4.4.2 With the exception of Tenant's franchisor shipping rates (i.e. UPS), Tenant understands and agrees that any price increase requests for individual sales items in excess of the following percentages in the following categories may only be changed by Tenant (i) presenting appropriate justification in writing to City at least sixty (60) days in advance of any proposed changes becoming effective and (ii) securing written approval of changes from City's Director prior to any possible effective date of a change. Approval of changes will be at City's sole discretion, with the exception of fees imposed by carriers (i.e. USPS, FedEx, UPS) (e.g. fuel surcharges, paper and corrugated price increases), which price changes may be adjusted by Tenant, as long as Tenant charges the actual carrier fees without any additional charges.

4.4.2.1 Five Percent (5%) - Typing/Word Processing Services; Mailbox Rental; Computer Services; Passport and Photo ID Services; Secure Shredding Services; Small Business Solutions

4.4.2.2 Ten Percent (10%) - Packing and Shipping Services (except franchisor shipping rates); Fax Services; Notary Services; House Account Program

4.4.2.3 Fifteen Percent (15%) - Document Services; Office and Mailing Supplies

4.4.3 Tenant's pricing shall be generally consistent with prices charged at its other local franchise locations, as well as in other similarly sized convention facilities operating a business center of the same franchise, as determined by Director.

## 4.5 Other Services and Products

- 4.5.1 Any gratuitous services or products (i.e. free) to be provided by Tenant must also be approved in writing in advance by City through Director.

All request from Tenant to provide services or products not specified in this Agreement or added to the lists of such services and products by future changes, must be in writing. City will respond to such requests within five (5) business days.

## 4.6 Marketing Plan. Tenant agrees to utilize the Marketing Plan set forth in

**Exhibit C** Marketing Plan. Such plan is provided by Tenant, setting forth steps to be undertaken to insure, track and report on Customer satisfaction. City will include (i) Tenant-produced collateral material with all proposals, contracts and coordinator mailings, (i) introduce Tenant's staff to Customers, when appropriate, (iii) provide Tenant with customer contact information, and (iv) include Tenant in the distribution of all meeting notices and site inspection announcements.

4.7 Operational Plan. Tenant agrees to use the Operational Plan attached as **Exhibit D** Operational Plan, which includes, but is not limited to:

- 4.7.1 Lists the equipment (including make, model and, if appropriate, capacity) to be utilized in offering Exclusive Products and Services and Non-Exclusive Products and Services;
- 4.7.2 Details the coordination of Business Center operations to accommodate special requests, and to meet peak and off-peak demand from a staffing, logistics and materials standpoint; and
- 4.7.3 Describes plans to accommodate light and heavy demand periods for package shipping from a staffing, logistics and materials standpoint.

4.8 City's Disclaimer. City shall not be liable for any damages caused to the Premises by reason of (i) any construction performed by Tenant, (ii) any maintenance of the Premises or (iii) any operation or activities in, on or about the Premises.

## **V. Rent and Taxes**

### **5.1 Calculation of Rent**

5.1.1 Existing Premises. For use of the Business Center, as set forth in this Agreement, Tenant agrees to pay monthly rent to City based on gross sales, as follows ("Rent"):

<b>Monthly Gross Sales</b>	<b>Monthly Percentage of Gross Sales as Rent</b>
\$0-\$15,000.99	7%
\$15,001.00-\$30,000.99	8%
\$30,001.00 and up	9%

5.2 Payment of Rent. Beginning on the effective date, Tenant agrees to pay to City the Rent due on the twentieth (20<sup>th</sup>) day of the following month during the Initial Term (for example, September Rent is due by October 20<sup>th</sup>). During the Renewal Term, if any, Rent may be negotiated and Tenant agrees to pay such Rent in the monthly amount, as agreed to in advance, during such Renewal Term.

5.3 Statement/Place of Payment. With each monthly remittance of the Rent, Tenant shall furnish to City a statement showing the Rent due for the immediately preceding month. Payments of all fees and charges shall be made payable to the City of San Antonio, and mailed, along with the statement, to:

City of San Antonio Convention & Sports Facilities  
Attn: Fiscal Division  
P.O. Box 1809  
San Antonio, TX 78296-1809

5.4 Delinquency. Without waiving any other right of action available to City in the event of default in the timely payment of any Rent and any other fees and charges due by Tenant to City pursuant to this Agreement, Tenant agrees to pay to City interest thereon at the rate of ten (10%) percent per annum from the date such item was due and payable until paid, unless such rate is declared usurious under applicable Texas law, whereupon Tenant agrees to pay the highest rate of interest allowed by such law. Such interest shall not accrue with respect to disputed items being contested in good faith by Tenant.

5.5 Revenue Control System. Within thirty (30) days of the effective date of this Agreement, Tenant shall provide City with written documentation of Tenant's revenue control system, including examples of reports, journals, ledgers, forms, etc., to ensure suitability with standards issued by the American Institute of Certified Public Accountants. Thereafter, upon City request, Tenant shall provide to City updated documentation of its revenue control system.

5.6 Holdover. If Tenant remains on the Premises after the end of the Initial Term or Renewal Term without the approval of City, then Tenant shall pay to City 125% times (x) the Rent set forth above during the Initial Term and during the Renewal Term for every full or partial month of such holdover.

5.7 Taxes. Tenant shall pay any and all applicable taxes on accounts of its services under this Agreement, including but not limited to, real property, personal property, sales tax and possessory interest or use tax, assessed or levied on Tenant's or City's interest in this Agreement, Tenant's real or personal property and/or improvements constructed by Tenant in the Premises, if any. This provision constitutes notice of possibility of the imposition of a possessory interest tax.

5.8 If Tenant desires to change the number of square feet to be used as part of the Premises, then such change and corresponding change in the Rent must be approved by the San Antonio City Council, as evidenced by passage of a future City of San Antonio Ordinance.

## **VI. Operation, Maintenance and Repairs**

6.1 Responsibility. Except as otherwise provided in this Agreement, Tenant shall, throughout the term of this Agreement, assume the entire responsibility, cost and expense, for all operation, repair and maintenance whatsoever of all improvements, fixtures, equipment, furnishings, trade fixtures, furniture and other property installed and/or placed on the Premises, including freestanding displays, enclosures and similar paraphernalia, which operation, repair or maintenance directly relates to the business conducted on the Premises, whether such operation, repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, without limiting the generality of the foregoing, Tenant shall at its sole cost and expense:

- 6.1.1 Maintain, at all times, the Premises and Tenant's improvements, fixtures, equipment, furnishings, trade fixtures, furniture and other property installed and/or placed on the Premises, including freestanding displays, enclosures and similar paraphernalia located thereon, in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair, as determined by City.
- 6.1.2 Replace or substitute any of Tenant's improvements, fixtures, equipment, furnishings, trade fixtures, furniture and other property installed and/or placed on the Premises, including freestanding displays, enclosures and similar paraphernalia located thereon, which have become inadequate, obsolete, worn out, unsuitable or undesirable with replacement or substitute improvements, fixtures, equipment, furnishings, trade fixtures, furniture and other property installed and/or placed on the Premises, including freestanding displays, enclosures and similar paraphernalia, all of which must be free of all liens and encumbrances.
- 6.1.3 Keep, at all times, in a clean and orderly condition and appearance and free of debris, the Premises and all of Tenant's improvements, fixtures, equipment, furnishings, trade fixtures, furniture and other property installed and/or placed on the Premises, including freestanding displays, enclosures and similar paraphernalia.
- 6.1.4 Repair any damage to the Premises caused by Tenant, including replacing any broken or cracked plate glass and painting and repainting Tenant's improvements on.
- 6.1.5 Be responsible for the operation, maintenance and repair of all utility service lines and connections, either installed by Tenant on the Premises for use and operation of Tenant's equipment, or to which Tenant's equipment may be connected, but installed by City upon the Premises, including in each instance, but not limited to, electric and telephone conduits, facsimile transmission lines, computer

equipment and lines, fiber optic cables, television cable, or satellite and other similar cable, "dish" and other connections and lines.

- 6.1.6 Provide and maintain all security devices, fire protection, and safety equipment, and all other equipment of every kind and nature required by laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including City and Director, and as may be usually and normally required in the operation of a business of the kind and nature being conducted on the Premises.

6.2 Adequacy. The adequacy of the performance of the above set forth maintenance and repair by Tenant shall be determined by Director, whose judgment shall be conclusive. Should Tenant refuse or neglect to undertake any operation, maintenance or repair set forth in this Section, or if City is required to perform any operation, maintenance or repair necessitated by the negligent acts or omissions of Tenant, then City shall have the right, but not the obligation, to perform such maintenance or repair, but not operation, on behalf of, and for, Tenant. The costs of such maintenance or repair, plus the cost of any associated overhead reasonably determined by City, shall be reimbursed by Tenant to City no later than thirty (30) days following receipt by Tenant of written demand from City for such reimbursement.

## **VII. City's Maintenance and Repairs**

7.1 City agrees to maintain the exterior of the Convention Center, including roof, walls, foundation and HVAC.

### **7.2 Utilities**

7.2.1 The Premises are currently serviced by the necessary utilities for the purposes stated in Section 2.1 of this Agreement.

7.2.2 Beginning on the effective date and thereafter during the Initial Term and Renewal Term, City agrees to be responsible for the payment of all utility charges each month.

7.3 Common Area Maintenance. City shall provide common area maintenance and janitorial cleaning service to the Premises, as City deems necessary, for the proper upkeep of the building structure.

7.4 Ingress and Egress. Subject to any limitations stated elsewhere herein, Tenant shall be granted the right of ingress to and egress from the Premises during normal business hours for the purposes stated in this Agreement.

7.5 Prohibited Uses. Tenant shall conduct its operation in such a manner so as to prevent the following from taking place at the Premises:

- 7.5.1 Any cause for public nuisance;
- 7.5.2 Any creation of objectionable noises, notwithstanding Tenant's services;
- 7.5.3 Any generation of noxious smoke, gases, vapors and odors;
- 7.5.4 Any illegal activity; and
- 7.5.5 Activities other than those permitted by this Agreement.

7.6 Fire and Other Hazards. Tenant shall observe all insurance and other requirements and regulations on the Premises concerning its use and condition for the purpose of reducing fire hazards and insurance rates.

7.7 Deliveries. Deliveries of all supplies, goods, wares, merchandise and equipment shall be made at locations and times mutually agreed by Tenant and City, provided however, that City shall not unreasonably withhold its agreement where such locations and times are reasonably established by Tenant as necessary to provide the services and which do not otherwise unreasonably interfere with the operation of the Premises.

7.8 Telecommunications. City may provide telecommunication services to Tenant upon written request by Tenant and at Tenant's expense. Any installation or use of telecommunication services by Tenant other than that provided by City is prohibited under this Agreement. Should Tenant request such services, Tenant agrees to pay all usage fees and charges when due.

7.9 Trash and Debris. Tenant shall provide and use suitable covered metal receptacles for all garbage, trash and other refuse consistent with adjacent City-owned properties' receptacles; assure that boxes, cartons, barrels and similar items are not stored in an unsightly, unsafe manner on or about the Premises, and; provide a complete and proper arrangement, satisfactory to the City, for the adequate, sanitary handling, disposal and removal of all trash, garbage and refuse caused as a result of its operations.

7.10 Manager. Tenant shall assign a fully qualified and experienced representative to manage the Premises, who will serve as liaison between Tenant and City, with full authority to make decisions for Tenant as may be required under the terms of this Agreement. On or before the effective date of the Agreement, Tenant shall have provided to City the following:

- (i) the name, business address, and telephone number of Tenant's manager at the Premises, and; (ii) the name, business address, and telephone number of an alternate person who is authorized to take such action in the absence of Tenant's manager. Tenant shall update this information throughout the term of the Agreement and provide same in writing to City.

7.11 Hours of Operation. Tenant shall remain open for business from 9:00 a.m. to 5:00 p.m., Monday through Friday, and 10:00 a.m. to 3:00 p.m. Saturday, excepting

only Sundays and the holidays of New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day, times are contingent on scheduled events at the Convention Center, which could require Tenant to open or remain open, and at such other times as additionally required by City in writing at least thirty (30) days in advance. Reduced hours may be scheduled when the Convention Center is secured from public access or inactive due to scheduling. Revised schedules must be clearly posted to include alternate sources of customer support and assistance, if necessary.

7.12 Identification. For security purposes, Tenant shall issue photo identification badges to all of its full and part-time employees. All badges must clearly indicate the employee and Tenant name. Tenant identification badges should be worn at all times while on the Premises. Tenant should recover all badges from terminated or reassigned employees.

7.13 Uniforms, Appearance and Conduct. Tenant, at its sole cost and expense, shall supply all of its full and part-time personnel with a standardized uniform and/or shirt, with Tenant's logo affixed to the shirt, identifying their employment, and require employees to wear these uniforms while on the Premises. Further, Tenant shall adopt and enforce a policy on appearance and conduct for its staff consistent with the City's practices and expectations.

7.14 Facility Access and Security. Tenant shall provide the City with a list of employee names, and immediately notify City of any personnel changes. Tenant shall comply with City's rules and regulations governing access to and conduct on the Premises. Tenant's staff shall enter the Premises through entrances designated by City. Tenant agrees to comply with any of City's future security practices at its sole cost and expense.

7.15 Employee Replacement. Tenant shall replace any of Tenant's employees assigned to the Premises upon the request of City.

7.16 Background Checks. Tenant shall screen applicants and shall conduct and ensure City that each of its full-time and part-time employees has a criminal background check, to the extent allowable by law, to ensure that Tenant's personnel do not pose a security or health risk to customers, including at a minimum, criminal history, references and prior employment history, to the extent necessary to verify representations made by said employees relative to their employment in the preceding ten (10) years. Tenant shall maintain documentation of each background check, less any private information, and shall provide that documentation to City upon request.

7.17 City's Operational Policies. Tenant shall comply with the Convention Center's Operational Policies, as may be amended, a copy of which may be obtained from City, or by downloading from the Convention Center's website.

7.18 Customer Survey. City shall send a survey to some and/or all Customers,

when appropriate, which grades Tenant's performance on a scale of "Excellent" to "Poor" (equating to scores from 4-1), or as may be amended from time to time. Any individual survey results indicating Tenant ratings of "Fair" or less, or the equivalent ratings then in effect, will require Tenant's Manager to provide a written plan to City on how Tenant will address and/or respond to such customers. Tenant shall provide any additional information to City describing the circumstances causing such survey ratings. Tenant will provide survey responses to Customers, with copies to City.

## **VIII. Construction**

8.1 Alterations and Additions. Tenant shall be responsible for all construction and installation of future improvements, if any, and any other costs related to this Agreement, and City shall have no financial obligations whatsoever regarding this Agreement. No alterations or additions to the Premises are permitted or will be performed by Tenant without the written consent of City.

8.2 Compliance. Tenant, at its sole cost and expense, shall (i) secure all necessary permits, (ii) comply with all federal and state laws, City ordinances, building codes, rules and regulations, and (iii) secure the approval of all City departments, boards and commissions, including, but not limited to, the Historic and Design Review Commission, prior to the start of any construction, installation, etc., and throughout the Initial Term and Renewal Term.

8.3 No Liens. Tenant covenants that Tenant shall not bind, nor shall Tenant's contractors, subcontractors, licensees, concessionaires, or any other parties bind, or attempt to bind, City for payment of any money in connection with any improvements constructed, or equipment installed, as defined above in, on or about the Premises, whether authorized or unauthorized under this Agreement. Tenant agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all current or future improvements constructed. Tenant shall not suffer or permit any mechanic's lien or other liens to be filed against City's fee interest in the Premises nor fixtures, furnishings, furniture and other property of Tenant or its contractors, subcontractors, licensees, concessionaires and any other parties conducting business at the Premises, if said contractors, subcontractors, licensees, concessionaires and any other parties are approved by City, which equipment, trade fixtures, furnishings, furniture and other property have been installed in the Premises by reason of any work, labor, services or materials supplied or claimed to have been supplied to Tenant or its contractors, subcontractors, licensees, concessionaires, or any other parties conducting business at the Premises, if said contractors, subcontractors, licensees, concessionaire, and any other parties are approved by City. If any such mechanics' liens or materialmen's liens shall be recorded against the Premises, or any improvements or equipment, trade fixtures, furnishings, furniture or other property of Tenant, its contractors, subcontractors, licensees, concessionaires, or any other parties conducting business at the Premises, if said contractors, subcontractors, licensees, concessionaires, or any other parties are approved by City, located thereon shall cause the same to be removed or, in the

alternative, if Tenant, in good faith, desires to contest the same, **TENANT SHALL HAVE THE RIGHT TO DO SO, BUT IN SUCH CASE TENANT AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM ALL LIABILITY FOR DAMAGES OCCASIONED THEREBY, UNLESS OTHERWISE EXCEPTED OUT UNDER THIS AGREEMENT. TENANT WILL REQUIRE ITS TENANTS, SUBTENANTS, LICENSEES, CONCESSIONAIRES, AND ANY OTHER PARTIES CONDUCTING BUSINESS AT THE PREMISES, IF SAID TENANT, SUBTENANTS, LICENSEES, CONCESSIONAIRES, OR ANY OTHER PARTIES ARE APPROVED BY CITY OR ACT WITHOUT APPROVAL, TO FULLY INDEMNIFY AND HOLD HARMLESS CITY AGAINST ANY AND ALL CLAIMS, LIENS, SUITS OR ACTIONS ASSERTED BY ANY PERSON, FIRM OR CORPORATION ON ACCOUNT OF LABOR, MATERIAL OR SERVICES FURNISHED TO TENANT, ITS CONSTRUCTION TENANT, TENANT, SUBTENANTS, LICENSEES, CONCESSIONAIRES, AND ANY OTHER PARTIES CONDUCTING BUSINESS AT THE PREMISES, DURING THE PERFORMANCE OF ANY SAID IMPROVEMENTS CONSTRUCTED, AS DEFINED ABOVE, AND AGAINST ANY CLAIM FOR INJURY OR DEATH TO PERSONS OR DAMAGE TO ANY PROPERTIES.**

## **IX. Personal Property**

9.1 Trade fixtures, equipment, furnishings, furniture, signs, inventory and other property used by Tenant for all purposes shall remain the personal property of Tenant and shall not become or be considered real property or a part of the Premises, regardless of whether or by what means it is or may become attached or affixed to the Premises; however, City reserves its Landlord's Lien, as provided below, in order to secure payment of the Monthly Base Rent, Monthly Rent, Percentage Rents, and all other fees and charges due under this Agreement. All improvements constructed upon the Premises shall be approved in advance in writing by City as to design, etc., and shall become the property of City at no cost to City, upon the termination of this Agreement, but only if such improvements constructed are accepted by City upon such termination. Except for such improvements constructed upon the Premises by Tenant and accepted by City, Tenant agrees to remove such improvements constructed, at no cost or expense to City, to include the cost of repairing any damage to the Premises caused by such removal. City will advise Tenant of its acceptance or rejection of the improvements at least thirty (30) days prior to any termination date. The Premises shall be returned to the same condition prior to the effective date of this Agreement, except for (i) construction of improvements made upon the Premises by Tenant and (ii) normal wear and tear.

9.2 Removal. Upon termination of this Agreement, Tenant will immediately secure all of its personal property located on the Premises to prevent theft, damage, etc. within ten (10) days after termination. Tenant, at its sole cost and expense, agrees to remove within said ten (10) days, said personal property from the Premises and return the Premises to City in the condition referenced in Section 9.1. City shall not be liable for the theft, damage or other condition of the personal property, or construction or installation of improvements, at any time during the term

of this Agreement, or upon termination and thereafter.

9.3 Abandonment. If improvements constructed, or personal property, remain on the Premises for a period of ten (10) days after termination of this Agreement, then such items shall be deemed abandoned by Tenant and may be sold or disposed of by City without any liability to Tenant whatsoever, for payment, damage or otherwise.

## **X. Advertising and Signage**

10.1 Advertising. Tenant may operate on the Premises using its trademark, logo or service mark, as permitted by applicable laws or regulations, and may provide on the Premises any advertising material, as approved in writing in advance by Director, in connection with and in promotion of Business Center operations. Tenant may advertise its products and services within the Convention Center, subject to prior coordination with and approval by City.

10.2 Signage. Any and all requests for signage by Tenant shall be submitted in advance to Director for prior approval and Tenant must also obtain prior written approval from any applicable City Departments, Boards and Commissions, including, but not limited to, the Historic and Design Review Commission, as to design, signage, etc. Tenant, through its sign contractor, shall be responsible for securing any necessary licenses or permits required for the use of any trademark, logo or service mark for signs and advertising materials. Submission to Director, shall contain a complete description of the sign, including construction documents, colors and any other information, as requested by Director, and shall accompany Tenant's request for approval on any and all signage for the Premises. Location of advertising and signs shall be inside the Premises or on the outside of the Premises. Tenant shall not erect, install or operate signage or improvements outside the, or in or upon any other City property, without first having obtained the written consent of Director. Such written consent may provide conditions concerning factors such as existing signage, size, type, content, and method of installation.

10.3 Tenant will be solely responsible for all costs associated with the permits, approval, manufacture, installation, and ongoing maintenance of any and all signage.

10.4 No Other Advertising. Tenant shall not advertise or permit advertising in any manner other than as described in this Agreement and shall have no right to use the trademarks, symbols or trade name or names of the Convention Center in connection with any production, promotion, service or publication not located in the Premises, without the prior written approval of City.

10.5 Advertising Rentals. Tenant is prohibited from renting display screens for the purpose of advertising within the lobbies of the Premises without the expressed written consent of Director.

10.6 Reference to City. Tenant shall not refer to City or any office, agency, or officer thereof, or any City employee, or to the services or goods provided under this Agreement, without the written consent of Director.

10.7 Customer Information. Tenant shall not share any of the data collected from Customers with any other companies, including parent companies or other affiliated companies.

10.8 Use of Other Contractors. Tenant shall not solicit, advertise or promote the use of companies, other than Tenant, on the Premises.

## **XI. Intellectual Property**

11.1 Tenant agrees to obtain all necessary licenses and take all other necessary steps to ensure that all use of trademarked or copyrighted materials during the term of the Agreement complies with United States and any other applicable trademark and copyright law.

11.2 **Tenant shall FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, at its own expense, City, its officials, agents and employees from any and all liability arising from intellectual property right infringement and/or consequential damages that others may suffer as a result of the use by Tenant or its designee of trademarked, copyrighted or patented materials during the term of this Agreement.**

## **XII. Sustainability**

12.1 Recycling. Tenant shall make reasonable efforts to reduce, reuse and recycle at the Premises, and to purchase products with recycled content.

12.2 Energy Efficiency. Tenant shall make reasonable efforts to operate in a manner which conserves water, energy and utilities. Tenant shall also consider using certified or "green" equipment, methods and applications, as well as environmentally sustainable alternatives, that meet Leadership in Energy and Environmental Design (LEED) compliance standards.

12.3 City's Sustainability Requirements. Tenant shall comply with City's required sustainability practices at the Premises at its sole cost and expense.

## **XIII. Fire and Other Damage/Condemnation**

13.1 Responsibility for Damage to Premises and Other City-Owned Properties. If the Premises or any other City-owned real or personal properties, including the Convention Center, are damaged as a result of fire or other cause as a consequence of, or directly related to, Tenant's operations and installation on the Premises, then Tenant agrees to immediately repair and replace such damaged properties, at Tenant's sole

expense, completing such repair or replacement within ninety (90) days after the date of the damage, unless another period for such repairs or replacement is agreed to by the Parties.

13.2 Condemnation. It is agreed and understood that in the event that the Premises are taken, in whole or in part, by any governmental authority, and the taking materially deprives Tenant of its rights to use the remaining part of said Premises, if any, and any other rights pursuant to this Agreement, either City or Tenant may, upon thirty (30) days' prior written notice to the other, terminate this Agreement, to no cost to City. City shall be entitled to receive the entire condemnation award.

#### **XIV. Force Majeure**

14.1 In the event that the performance by either Party of any of its obligations under this Agreement shall be interrupted or delayed by any occurrence not occasioned by the conduct of either Party, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, disaster, or the act or conduct of any person or persons not a Party to this Agreement, then such Party shall be excused from performance for such period of time and each Party shall bear the cost of any expense it may incur due to the occurrence.

#### **XV. Audit and Records Retention**

15.1 Reports. Tenant shall provide to Director all reports reasonably requested by City including, but not limited to, reviewed financial statements and reports, reports and accounting of services rendered, and any other reports or documents reasonably requested in connection with services rendered under this Agreement. Tenant shall provide financial and service reports and any other reports or documents to City within five (5) business days after Tenant receives City's written requests, unless the parties agree in writing on a longer period. All documents that Tenant deems proprietary and confidential should be indicated as such before submittal to City. Tenant shall submit reports in a format suitable to City.

15.2 Independent CPA. City has the right, at its expense, to engage an independent Certified Public Accountant ("CPA") to perform either an annual audit of Tenant's financial statements, in accordance with *Generally Accepted Auditing Standards*, in addition to the audit referenced in Section 15.3, or agreed-upon procedures, to analyze and assess Tenant's revenues in accordance with the *Statements on Standards for Attestation Engagements*, as well as with other standards that may apply. Tenant agrees to cooperate in providing all information to said CPA.

15.3 Audit Rights. In addition to the requirement of Section 15.2, City or its authorized representative shall at all reasonable times with prior notice have the right to examine, inspect, and audit Tenant's Books and Records of Receipts relating to Tenant's products and services hereunder as necessary to determine the accuracy of reports relative to the Rent and for contract compliance under this Agreement. The cost and

expense incurred by City shall be the sole responsibility of City. If, as a result of such audit, or the audit referenced in Section 15.2, it is established that Tenant has understated the Rent and/or any other fees and charges due to City by three percent (3%) or more of the amount reported to City during the previous reporting period under this Agreement, then the entire expense of said audit shall be borne by Tenant. Any additional Rent and any other fees and charges due as a result of the understatement or otherwise, or because the fee or charge was unpaid, shall be paid by Tenant to City with interest thereon at ten percent (10%) per annum (or the highest rate allowed by Texas law) from the date such additional fees become due.

15.4 Cash Handling. Tenant shall, consistent with its business practices, take all precautions to ensure that all cash income received from any source and non-cash vouchers are immediately recorded and that designated reports are submitted as may be required by City currently or in the future.

15.5 Notification. Tenant shall be notified by Director of conditions needing reasonable correction or improvement. Tenant shall promptly comply with any such reasonable requests.

15.6 Records Retention.

15.6.1 Tenant shall maintain, in accordance with generally accepted accounting principles, full, complete, and accurate records and accounts of fees and all sums of money paid or payable for or on account of or arising out of the business and all business transactions covered by this Agreement. Such records and accounts, and all supporting records, shall be kept in a format mutually agreed upon by Tenant and City, provided to City on a monthly basis, and preserved by Tenant for four (4) years ("retention period") from the date of termination of the Agreement at the local offices of Tenant, and made available to City and City's duly authorized agents and representatives for examination during Tenant's regular business hours. As provided in Sections 15.2 and 15.3, City reserves the right to audit Tenant's books and records at any time upon demand.

15.6.2 If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services and/or payments provided under this Agreement, Tenant shall retain the records until the resolution of such litigation or other such questions. Tenant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Tenant to return said documents to City prior to or at the conclusion of said retention.

15.6.3 Any changes to record retention requirements will be determined by City, in its sole discretion.

15.7 Public Information. Tenant acknowledges that such records are subject to the Texas Public Information Act. Tenant shall notify City, immediately, in the event Tenant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Tenant understands and agrees that City will process and handle all such requests.

15.8 Media Inquiries. Tenant shall refer all media inquiries regarding the subject matter of this Agreement to Director.

## **XVI. Termination**

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

16.2 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XVI Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement: If this Agreement is terminated without cause by City, at its option, and approved by passage of a future

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

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

16.3 Defaults With Opportunity for Cure. Should Tenant default in the performance of a material provision of this Agreement, it shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Tenant shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article XVI Notice, to cure such default. If Tenant fails to cure the default within such cure period, or if such cure cannot be reasonably cured within such period, or if Tenant fails to commence and diligently pursue such cure within such period, City shall have the right, without further notice, to terminate this Agreement, in whole or in part, as City deems appropriate, and to contract with another entity to complete the work required in this Agreement.

16.3.1 Failing to perform or failing to comply with any covenant herein required.

16.3.2 Performing unsatisfactorily.

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

16.5 Orderly Transfer. Regardless of how this Agreement is terminated, Tenant 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 Tenant, or provided to Tenant, regardless of storage medium, if so requested by City, or shall otherwise be retained by Tenant in accordance with Article XIV Audit and Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Tenant's sole cost and expense.

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

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

## **XVII. Notice**

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

If intended for City, to:

City of San Antonio Attn: Director  
Convention & Sports Facilities Department 900 E. Market St.  
San Antonio, TX 78205

If intended for Tenant, to:

**Veronica Renae Crutches  
SK3 Logistics Business Solutions, LLC  
1346 Cross Gable  
New Braunfels, Texas 78132**

And with copies to:  
The UPS Store  
Area Franchisee  
5152 Broadway ST  
STE 209  
San Antonio, Texas 78209

The UPS Store, Inc  
6060 Cornerstone Court W  
San Diego, California 92121

### **XVIII. Insurance**

18.1 No later than 30 days before the effective date of this Agreement, Tenant must provide a completed Certificate(s) of Insurance to City's Convention & Sports Facilities Department. The certificate must be:

- clearly labeled with the legal name of the Agreement 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 Convention & Sports Facilities Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

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

18.4 Tenant shall obtain and maintain in full force and effect for the duration of this Agreement, at Tenant'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 Tenant claims to be self-insured, they must provide a copy of their declaration page so City can review their deductibles:

<b>INSURANCE TYPE</b>	<b>LIMITS</b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Damage to property rented by you g. Independent Contractors *h. Explosion, Collapse, Underground Property Hazard Liability	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.  e.) \$200,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim 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. Installation Floater	All Risk Policy written on occurrence basis for 100% replacement cost of "equipment & materials" to be installed to any new or existing structure.
7. Property Insurance	One Hundred Percent (100%) replacement value for Structure, and replacement cost coverage of eighty

percent (80%) of actual cash value for improvements and betterments
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18.5 Tenant must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Tenant and provide a certificate of insurance and endorsement that names Tenant and City as additional insureds. Tenant shall provide City with subcontractor certificates and endorsements before the subcontractor starts work.

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

City of San Antonio  
Attn: Convention Sports and Entertainment Facilities  
P.O. Box 839966  
San Antonio, Texas 78283-3966

18.7 Tenant'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.
- Tenant 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.

18.8 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Tenant'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.

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

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

18.11 Tenant'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.

18.12 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.

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

## **XIX. Indemnity**

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

**DEFEND, and HOLD CITY HARMLESS from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.**

The provisions of this Indemnity are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Tenant shall advise City in writing within 24 hours of any claim or demand against City or Tenant known to Tenant related to or arising out of Tenant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Tenant's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Tenant of any of its obligations under this paragraph.

Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Tenant in fulfilling its obligation to defend and indemnify City, unless such right is expressly waived by City in writing. Tenant shall retain City-approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Tenant fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Tenant 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.

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

## **XX. Small Business Economic Development Advocacy Program**

20.1 In respect to its operations on the Premises, Tenant shall conform to City's Small Business Economic Development Advocacy Program (hereafter called "SBEDA Program"), a copy of which is attached hereto as **Exhibit B** City's Small Business Economic Development Advocacy (SBEDA) Program.

## **XXI. Assignment and Subcontracting**

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

21.2 It is City's understanding, and this Agreement is made in reliance thereon, that Tenant intends to perform all the work under this Agreement. The use of any subcontractors shall require the prior approval of City.

21.3 This Agreement is personal to Tenant and Tenant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer or any other means (other than to The UPS Store, Inc., or to any corporation or other entity with which Tenant may merge or consolidate, or to a first lienholder in connection with a foreclosure or deed in lieu with respect to such first lien), without the prior written consent of City. As a condition of such consent, if such consent is granted, Tenant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Tenant, assignee, transferee or subcontractor. Tenant agrees to notify City in writing in advance of any "expected" transfer to a parent, or to any corporation, or other entity with which Tenant may merge or consolidate, or which may succeed to controlling interest in the business of Tenant, or to a first lienholder in connection with a foreclosure, or deed in lieu with respect to such first lien, even though City's prior consent is not required.

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

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

## **XXII Independent Contractor**

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

### **XXIII. Conflict of Interest**

23.1 Tenant 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 Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: 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.

23.2 Pursuant to the subsection above, Tenant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Tenant further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

### **XXIV. Amendments**

24.1 Except where the terms of this Agreement expressly provide otherwise, any amendment to this Agreement shall not be binding on the Parties unless such amendment be in writing, executed by both City and Tenant, dated subsequent to the date hereof, and subject to City Council approval, if required.

### **XXV. Attorney's Fees**

25.1 In case City brings any action under this Agreement, and prevails in said action, then City shall be entitled to recover from Tenant City's reasonable attorney's fees (not to exceed the attorney's fees actually incurred by City in the defense or prosecution of such action).

### **XXVI. Severability**

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

in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XXVII. Nonwaiver of Performance**

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

## **XXVIII. Licenses/Certifications**

28.1 Tenant warrants and certifies that Tenant and any other person designated to provide services under this Agreement has the requisite training, license and/or certification to provide such services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to such services.

## **XXIX. Compliance**

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

29.2 Tenant shall pay wages that are not less than the minimum wages required by federal and state statutes and City ordinances, to persons employed in its operations.

29.3 Non-Discrimination. As a party to this Agreement, Tenant 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.

## **XXX. Captions**

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

### **XXXI. Gender**

31.1 Words of any gender used in this Agreement 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.

### **XXXII. Law Applicable**

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

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

### **XXXIII. Legal Authority**

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

### **XXXIV. Parties Bound**

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

### **XXXV. Incorporation of Exhibits**

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

- Exhibit A Business Center Diagram
- Exhibit B City's Small Business Economic Development  
Advocacy (SBEDA) Program
- Exhibit C Marketing Plan
- Exhibit D Operational Plan
- Exhibit E Pricing Schedule

### **XXXVI. Counterparts, One Agreement**

36.1 This Agreement and all other copies of this Agreement, insofar as they relate to the rights, duties, and remedies of the parties, shall be deemed to be one agreement. This Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **XXXVII. Entire Agreement**

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

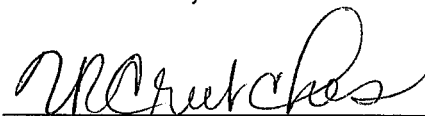
37.2 It is understood and agreed by the Parties that changes in applicable local, State or Federal rules, regulations or laws may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement, without written amendment, and shall become a part of this Agreement as of the effective date of such rule, regulation or law.

**EXECUTED to be effective September 1, 2023.**

**CITY OF SAN ANTONIO**

**SK3 LOGISTICS BUSINESS  
SOLUTIONS, LLC**

\_\_\_\_\_  
Patricia Muzquiz Cantor  
Director, Convention and Sports  
Facilities

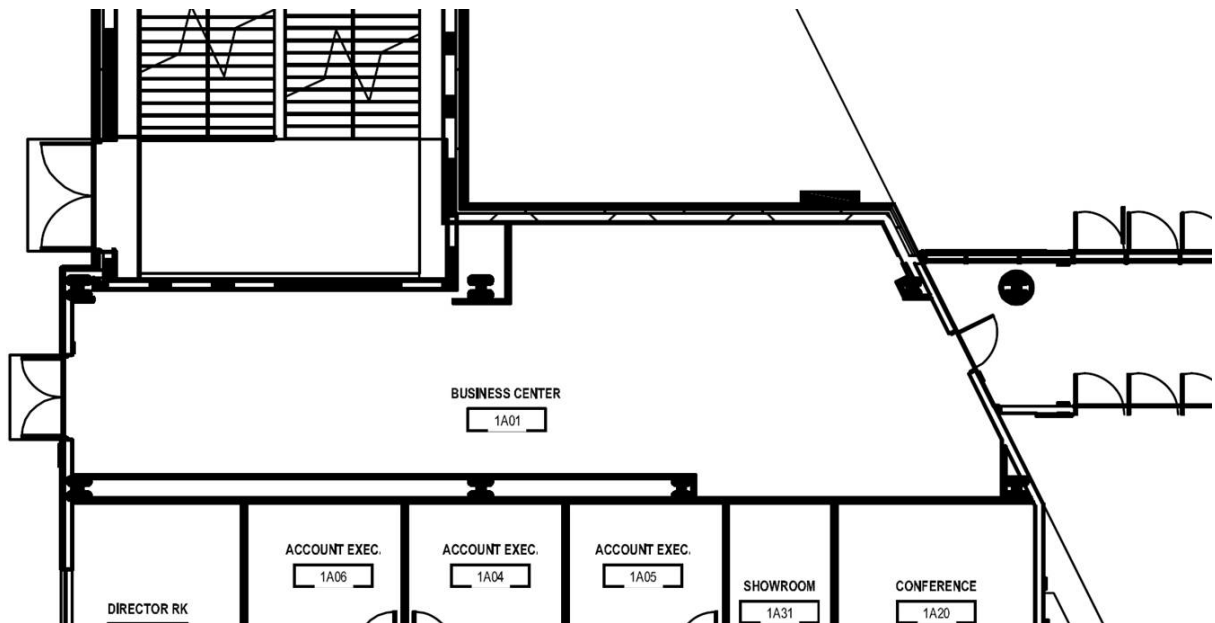
  
\_\_\_\_\_  
Veronica Renae Crutches  
Owner

**Approved as to Form:**

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

# BUSINESS CENTER DIAGRAM

## Exhibit A



**SMALL BUSINESS ECONOMIC DEVELOPMENT  
ADVOCACY (SBEDA) PROGRAM  
Business Center for the Henry B. Gonzalez Convention Center**

**Exhibit B**

**A. SBEDA Program**

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 City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to City. The SBEDA Ordinance Compliance Provisions contained in this Article 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 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**

City has applied the following contract-specific Affirmative Procurement Initiatives (API) to this Agreement. Tenant 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:

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

**SBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this Agreement is being awarded pursuant to the SBE Prime Contract Program, and as such, Tenant affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), Tenant agrees not to subcontract more than 49% of the Agreement value to a non-SBE firm.

**M/WBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 8. (b), this Agreement is being awarded pursuant to the M/WBE Prime Contract Program and as such, Tenant affirms that if it is presently certified as an M/WBE (see

*Minority/Women Business Enterprise* definition), Tenant agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

The **Subcontractor/Supplier Utilization Plan** which Tenant submitted to City with its response for this Agreement and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by Tenant this Agreement, 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 attached and incorporated by reference into the material terms of this Agreement.

**Subcontractor Diversity:** The City of San Antonio strongly encourages each bidder to be as inclusive as possible and to reach out to all segments of the M/WBE community. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio **Other Services** industry, as reflected in City's Centralized Vendor Registration system for the month of March 2022, African-American owned firms represent approximately 4.01% of available subcontractors, Hispanic-American firms represent approximately 10.68%, Asian-American firms represent approximately 0.72%, Native American firms represent approximately 0.11%, and Women-owned firms represent approximately 3.76% of available **Other Services** subcontractors

C. Solicitation Response and Contract Requirements and Commitment

Tenant understands and agrees that the following provisions shall be requirements of this Agreement:

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

**Exception Request** - A respondent may, for good cause, request an Exception to the application of the SBEDA Program if the respondent submits the *Exception to SBEDA*

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

D. SBEDA Program Compliance – General Provisions

As Tenant acknowledges that the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in CITY's SBEDA Policy & Procedure Manual are in furtherance of City's efforts at economic inclusion and, moreover, that such terms are part of Tenant's scope of work as referenced in 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. Tenant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this Agreement by City. Without limitation, Tenant further agrees to the following terms as part of its Agreement compliance responsibilities under the SBEDA Program:

1. Tenant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Tenant'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. Tenant 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 Tenant or its subcontractors or suppliers;
3. Tenant 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. Tenant shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Tenant's Subcontractor / Supplier Utilization Plan for this Agreement, with an explanation of

the necessity for such proposed changes, including documentation of Good Faith Efforts made by Tenant 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 Tenant 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. Tenant shall immediately notify the Originating Department and SBO of any transfer or assignment of its Agreement with City, as well as any transfer or change in its ownership or business structure.

6. Tenant 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 Agreement, for a minimum 7 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 Tenant's Subcontractor / Supplier Utilization Plan, Tenant 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 Tenant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. Tenant acknowledges that City will not execute a this Agreement until Tenant has registered and/or maintained active status in City's Centralized Vendor Registration System (CVR), and Tenant has represented to City which primary commodity codes each Subcontractor will be performing under for this Agreement. 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, Tenant 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 the Agreement;
2. Withholding of funds;
3. Rescission of Agreement based upon a material breach pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of Tenant or other business firm from eligibility for providing goods or services to 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, Tenant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, City 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 City's Relevant Marketplace. Tenant 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. Tenant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this Agreement is incorporated into the material terms of this Agreement. Tenant 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 Tenant, Tenant 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 Tenant's reported subcontract participation is accurate. Tenant 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 Tenant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Tenant, and no new City contracts shall be issued to the Tenant until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

#### 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 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 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 person 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, 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 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** – City department or authorized representative of 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 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 (SAMSAs), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**R(r)espondent** – 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 (SAMSAs)** – 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 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 (SAMS), 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 City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to City's issuance of a notice to proceed.

**Suspension** – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in 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 Agreement which states the Tenant'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 Tenant's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this Agreement, 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.

## **MARKETING PLAN**

### **Exhibit C**

**Refer to Respondent RFP Attachment A, Part Three – Proposed Plan**

## **OPERATIONAL PLAN**

### **Exhibit D**

**Refer to Respondent RFP Attachment A, Part Three – Proposed Plan**

## PRICING SCHEDULE

### Exhibit E

#### PRICE SCHEDULE

Respondent's proposal must be based on the proposed contract term, including renewal periods, stated in this RFP. Proposing a different term of the contract, or renewal terms may lead to disqualification of Respondent's proposal from consideration. As such, Respondent must provide pricing in the manner set forth in the RFP's Price Schedule. Failure to do so may lead to disqualification of Respondent's proposal from consideration.

Below proposed pricing should reflect services performed within the scope of services of this RFP.

Selected firm shall pay City proposed percentage of total adjusted gross sales.

Identify proposed percentage of adjusted gross sales to be paid to the City of San Antonio.

Gross Sales	Proposed Percentage
\$0 – \$15,000.99	<u>7</u> %
\$15,001.00 – \$30,000.99	<u>8</u> %
\$30,001.00 and up	<u>9</u> %
If additional service categories proposed, identify same & proposed percentage of adjusted gross sales to be paid to City.	