

**PROFESSIONAL SERVICES AGREEMENT
FOR
WELLNESS MEDICAL OVERSIGHT & STAFFING FOR
THE SAN ANTONIO FIRE DEPARTMENT**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“CITY”) acting by and through its Deputy City Manager or designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____ and **David A. Marks, MD, PA**, (“CONTRACTOR”). CITY and CONTRACTOR may be referred to herein collectively as the “Parties”.

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

**ARTICLE I
DEFINITIONS**

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

- 1.1 “CITY” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “City Council” is the City of San Antonio City Council.
- 1.3 “Director” or “Fire Chief” shall mean the CITY’s Fire Chief or designee, unless otherwise specified.
- 1.4 “CONTRACTOR” is defined in the preamble of this Agreement and includes its successors.
- 1.5 “Local Government Record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state,

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

- 1.6 “SAFD” shall mean the San Antonio Fire Department.

ARTICLE II

TERM

- 2.1 Initial Term. This contract shall begin upon the effective date of the ordinance awarding the contract or September 15, 2023, whichever is later. Unless sooner terminated in accordance with the provisions of this Agreement, the contract shall terminate on September 30, 2026.
- 2.2 Renewal Terms. At CITY’s option, this Agreement may be renewed under the same terms and conditions for up to two (2), additional one (1) year periods. Renewals shall be in writing and signed by the Fire Chief, without further action by the San Antonio City Council.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

ARTICLE III

SCOPE OF SERVICES

- 3.1 CONTRACTOR agrees to provide the services described in this Article III entitled Scope of Services in exchange for the fees described in Article IV. Fees and Payment Terms.
- 3.2 Physician. CONTRACTOR shall provide a Physician licensed in the State of Texas, as approved by the CITY, to provide medical oversight at the San Antonio Fire Department’s Health and Wellness Center. Specific duties and responsibilities for the Physician under this contract shall include:
- a) Develop and enter into a collaborative agreement with two Nurse Practitioners (NP).
 - b) Ensure that medical staff is qualified and competent to collect, conduct and interpret laboratory and radiology studies; conduct and interpret ultrasounds; conduct and interpret spirometry, hearing, and vision testing; and conduct treadmill electrocardiogram and physical examination in accordance with the SAFD Medical Assessment Policy.

- c) On a monthly basis, review no less than 10% of visit notes for exams conducted during that week. Chart review can be done remotely via Electronic Medical Records (EMR). NP's see an average of 50 patients a week; 25 per NP.
- d) Be available by phone, as needed, for consultation regarding lab results, test results, exam results, exposures and other policy or regulatory questions during normal business hours.
- e) Provide referrals for patients requiring medical treatment or services.
- f) Assist SAFD's Wellness Manager with formulating policies, procedures and other written documents used both for internal and external communication.
- g) Demonstrate knowledge of state and federal medical privacy requirements to ensure compliance.

3.3 Onsite Nurse Practitioners. CONTRACTOR shall provide two (2) Nurse Practitioners (NPs) licensed in the State of Texas, as approved by the CITY, onsite at the San Antonio Fire Department Wellness Center, for 40 hours a week per NP, Monday through Friday, 07:45 AM to 04:30 PM, unless otherwise determined in conjunction with the SAFD Wellness Manager.

- a) CONTRACTOR shall send a backup/replacement NP in the event a NP is not available to provide services due to leave of any kind.
- b) NPs see an average of 50 patients a week; 25 per NP.

Specific duties and responsibilities for the Nurse Practitioners under the contract shall include:

- c) Collecting, conducting and interpreting laboratory and radiology studies; conducting and interpreting ultrasounds; conducting and interpreting spirometry, hearing, and vision testing; conducting treadmill electrocardiogram and physical examination in accordance with the SAFD Medical Assessment Policy.
- d) Providing in-depth health counseling and guidance in the prevention of disease and the maintenance of health.
- e) Examining, evaluating, and treating individuals using professional medical procedures.
- f) Assessing the physical, social and mental health needs of individuals and interpreting the information collected to define and implement a health care plan.
- g) Working with other health care providers and community agencies to coordinate services and promote a comprehensive system of health care delivery.

- h) Performing physical assessment of patients.
- i) Coordinating patient care and follow-up and or referrals.
- j) Maintaining accurate and current records.
- k) Providing case management of uniform employees.
- l) Performing related duties and fulfill responsibilities as required.

3.4 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of Fire Chief. The determination made by Fire Chief shall be final, binding, and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory to Fire Chief. CITY shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should CONTRACTOR's work not be satisfactory to Fire Chief; however, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should CITY elect not to terminate. CITY shall notify CONTRACTOR in writing of any decision to withhold payment. Should CITY elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

ARTICLE IV

FEES AND PAYMENT TERMS

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by Fire Chief, of all services and activities set forth in this Agreement, CITY agrees to pay CONTRACTOR the Monthly/Hourly Rates indicated below. These rates shall constitute full and complete payment for all services to be performed by CONTRACTOR under this Contract and shall be paid as follows:

	Rate	Estimated Quantity	Estimated Cost
September 15, 2023 to September 30, 2023			
Base Cost	\$3,200 per Month	0.5	\$1,600.00
Onsite Nurse Practitioner 1	\$68.00 per Hour	88	\$5,984.00
Onsite Nurse Practitioner 2	\$68.00 per Hour	88	\$5,984.00
			\$13,568.00
	Rate	Estimated Annual Quantity	Estimated Annual Cost
Year 1: October 1, 2023 to September 30, 2024			
Base Cost	\$3,200 per Month	12	\$38,400.00
Onsite Nurse Practitioner 1	\$68.00 per Hour	2,080	\$141,440.00

Onsite Nurse Practitioner 2	\$68.00 per Hour	2,080	\$141,440.00
			\$321,280.00
Year 2: October 1, 2024 to September 30, 2025			
Base Cost	\$3,200 per Month	12	\$38,400.00
Onsite Nurse Practitioner 1	\$69.00 per Hour	2,080	\$143,520.00
Onsite Nurse Practitioner 2	\$69.00 per Hour	2,080	\$143,520.00
			\$325,440.00
Year 3: October 1, 2025 to September 30, 2026			
Base Cost	\$3,200 per Month	12	\$38,400.00
Onsite Nurse Practitioner 1	\$70.00 per Hour	2,080	\$145,600.00
Onsite Nurse Practitioner 2	\$70.00 per Hour	2,080	\$145,600.00
			\$329,600.00
(Renewal Option) Year 4: October 1, 2026 to September 30, 2027			
Base Cost	\$3,200 per Month	12	\$38,400.00
Onsite Nurse Practitioner 1	\$71.00 per Hour	2,080	\$147,680.00
Onsite Nurse Practitioner 2	\$71.00 per Hour	2,080	\$147,680.00
			\$333,760.00
(Renewal Option) Year 5: October 1, 2027 to September 30, 2028			
Base Cost	\$3,200 per Month	12	\$38,400.00
Onsite Nurse Practitioner 1	\$72.00 per Hour	2,080	\$149,760.00
Onsite Nurse Practitioner 2	\$72.00 per Hour	2,080	\$149,760.00
			\$337,920.00

- 4.2 CONTRACTOR shall submit invoices to CITY monthly, in a form acceptable to CITY, which CITY shall pay within 30 days of receipt and approval by Fire Chief. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Fire Department, P.O. Box 839966, San Antonio, Texas 78283-3966. Alternatively, invoices can be submitted electronically to accounts.payable@sanantonio.gov with a copy to betsy.dose@sanantonio.gov.
- 4.3 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by CITY. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in section 4.1 above. Total payments to CONTRACTOR cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.
- 4.4 CITY shall not be obligated or liable under this Agreement to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

ARTICLE V
OWNERSHIP OF DOCUMENTS

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

ARTICLE VI
RECORDS RETENTION

- 6.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 6.2 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR 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 CONTRACTOR to return the documents to CITY at CONTRACTOR's expense prior to or at the conclusion of the retention period. In such event, CONTRACTOR may retain a copy of the documents at its sole cost and expense.

- 6.3 CONTRACTOR shall notify CITY, immediately, in the event CONTRACTOR receives any requests for information from a third party, which pertain to the documentation and records referenced herein. CONTRACTOR understands and agrees that CITY will process and handle all such requests.
- 6.4 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY in a given fiscal year, CONTRACTOR acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the CITY or sent between the CITY and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. CONTRACTOR agrees that the contract can be terminated if CONTRACTOR knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.5 CONTRACTOR warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. CITY hereby relies on CONTRACTOR's certification, and if found to be false, CITY may terminate this Agreement for material breach.

ARTICLE VII

TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by CITY without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, CITY may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
 - 7.3.2 Neglect or failure by CONTRACTOR to perform or observe any of the terms, conditions, covenants or guarantees of this Contract or of any amendment between CITY and CONTRACTOR;
 - 7.3.3 Failure by CONTRACTOR to correct any deficiency therein within the time allotted, as specified in a written notice from CITY to CONTRACTOR sent pursuant to Article VIII, Notice; or
 - 7.3.4 Any material breach of the terms of this Agreement, as determined solely by CITY.

- 7.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. CITY shall deliver written notice of said default specifying such matter(s) in default. CONTRACTOR shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR fails to cure the default within such 30-day cure period, CITY shall have the right, without further notice, to terminate this Agreement in whole or in part as CITY deems appropriate, and to contract with another contractor to complete the work required in this Agreement. CITY shall also have the right to offset the cost of said new Agreement with a new contractor against CONTRACTOR's future or unpaid invoice(s), subject to the duty on the part of CITY to mitigate its losses to the extent required by law.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
 - 7.4.2 Bankruptcy or selling substantially all of company's assets;
 - 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
 - 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, CONTRACTOR shall effect an orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by CONTRACTOR in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by CITY.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, CONTRACTOR shall submit to CITY its claims, in detail, for the monies owed by CITY for services performed under this Agreement through the effective date of termination. Failure by CONTRACTOR to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR or any of its subcontractors pursuant to this Agreement.

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

ARTICLE VIII **NOTICE**

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

If intended for CITY, to:

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

If intended for CONTRACTOR, to:

David A. Marks, MD, PA
115 Gallery Circle Suite 102
San Antonio, TX 78258

ARTICLE IX **RESERVED**

ARTICLE X **INSURANCE**

- 10.1 No later than 30 days before providing services under this Agreement, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY's Fire Department. The certificate must be:

10.1.1 clearly labeled with the legal name of the event in the Description of Operations block;

10.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and

- 10.1.3 properly endorsed and have the agent's signature, and phone number.
- 10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Fire Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 10.3 If the CITY does not receive copies of insurance endorsement, then by executing this Agreement, CONTRACTOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.
- 10.4 The CITY's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 10.5 CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, at CONTRACTOR'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the CONTRACTOR claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For Bodily Injury and Property Damage \$500,000 per occurrence; \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$250,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.

	Coverage must be maintained and in effect for no less than two years subsequent to the completion of the professional service.
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10.6 CONTRACTOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONTRACTOR and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. CONTRACTOR shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

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

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

10.7 CONTRACTOR's insurance policies must contain or be endorsed to contain the following provisions:

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

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

CONTRACTOR's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 10.9 In addition to any other remedies CITY may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONTRACTOR to stop work and/or withhold any payment(s) which become due to CONTRACTOR under this Agreement until CONTRACTOR demonstrates compliance with requirements.
- 10.10 Nothing contained in this Agreement shall be construed as limiting the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this Agreement.
- 10.11 CONTRACTOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by CITY for liability arising out of operations under this Agreement.
- 10.12 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.
- 10.13 CONTRACTOR and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE XI

INDEMNIFICATION

- 11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY**

IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, CONTRACTOR agrees to indemnify, defend, and hold the CITY harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.
- 11.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

ARTICLE XII

ASSIGNMENT AND SUBCONTRACTING

- 12.1 CONTRACTOR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.
- 12.2 It is CITY's understanding and this Agreement is made in reliance thereon, that CONTRACTOR intends to use the following subcontractors in the performance of this

Agreement: [None]. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Fire Chief in writing.

- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of CONTRACTOR. CITY shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Fire Chief.
- 12.4 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Fire Chief. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR 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 CONTRACTOR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to CITY, which CITY sustains as a result of such violation.

ARTICLE XIII

INDEPENDENT CONTRACTOR

CONTRACTOR covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of “respondeat superior” shall not apply as between CITY and CONTRACTOR, 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 CONTRACTOR. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this Agreement and that the CONTRACTOR has no authority to bind the CITY.

ARTICLE XIV
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

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

ARTICLE XV
CONFLICT OF INTEREST

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a CITY officer or employee, as those terms are defined in Sections 2-42 and 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the CITY. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a CITY officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a CITY contract, (ii) a partner or (iii) a parent or subsidiary entity.

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

ARTICLE XVI **AMENDMENTS**

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

ARTICLE XVII **RESERVED**

ARTICLE XVIII **COMPLIANCE**

- 18.1 CONTRACTOR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 18.2 Non-Discrimination. As a party to this contract, CONTRACTOR understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
- 18.3 HIPAA. CONTRACTOR shall provide and perform all services required in this contract in compliance with all applicable federal, state and local laws, rules and regulations, including but not limited to the Health Insurance Portability and Accessibility Act of 1996, as amended ("HIPAA"), the Privacy Rule, the Security Rule, and the Electronic Transportation Standards (45 CFR 160, 162, 164, respectively) and the Business Associate Agreement attached hereto and incorporated herein as **Exhibit B**. CONTRACTOR shall

provide CITY with copies of CONTRACTOR's policies and procedures pertaining to HIPAA upon request.

ARTICLE XIX
INTELLECTUAL PROPERTY

19.1 CONTRACTOR shall pay all royalties and licensing fees necessary for performing its obligations under this Agreement. CONTRACTOR shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONTRACTOR has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the CITY.

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

Either:

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

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

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

19.3 CONTRACTOR further agrees to:

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

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

19.3.3 Indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided that:

19.3.4 CONTRACTOR is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONTRACTOR agrees to consult with the City Attorney of the CITY during such defense or negotiations and make good faith

- effort to avoid any position adverse to the interest of the CITY;
- 19.3.5 The Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONTRACTOR or as modified without the permission of CONTRACTOR, so long as such modification is not the source of the infringement claim;
- 19.3.6 The liability claimed shall not have arisen out of the CITY's negligent act or omission; and
- 19.3.7 The CITY promptly provide CONTRACTOR with written notice within 15 days following the formal assertion of any claim with respect to which the CITY asserts that CONTRACTOR assumes responsibility under this section.

ARTICLE XX

NONWAIVER OF PERFORMANCE

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

ARTICLE XXI

LICENSES/CERTIFICATIONS

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

ARTICLE XXII

LAW APPLICABLE & LEGAL FEES

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

- 22.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between CITY and CONTRACTOR arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 22.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XXIII

LEGAL AUTHORITY

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

ARTICLE XXIV

PARTIES BOUND

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

ARTICLE XXV

CAPTIONS

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

ARTICLE XXVI

CONFIDENTIAL INFORMATION

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

disposition.

ARTICLE XXVII **SEVERABILITY**

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

ARTICLE XXVIII **STATE PROHIBITIONS ON CONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XXX
CONFLICT OF INTEREST

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

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

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

ARTICLE XXXI
EXECUTION IN COUNTERPART

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

ARTICLE XXXII
AUTOPEN OR ELECTRONIC SIGNATURE

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

ARTICLE XXXIII
INCORPORATION OF EXHIBITS

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, with this document taking priority over all exhibits:

Exhibit A CITY's Request for Qualifications (RFQ) No. 23-109; RFx 6100017117, including any addendums, exhibits, and attachments

Exhibit B HIPAA Business Associate Agreement

Exhibit C CONTRACTOR's Proposal submitted in response to RFQ No. 23-109; RFx 6100017117

ARTICLE XXXIV
ENTIRE AGREEMENT

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

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

CITY OF SAN ANTONIO

DAVID A. MARKS, MD, PA

(Signature)

Printed Name: **Maria Villagomez**

Title: **Deputy City Manager**

Date: _____



(Signature)

Title: **President**

Date: **08/25/2023**

Assistant City Attorney