

**PROFESSIONAL SERVICES AGREEMENT
FOR
INDEPENDENT VERIFICATION AND VALIDATION (IV&V) FOR SAP**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement (the “Agreement”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“CITY”) acting by and through its Chief Information Officer (“CIO”) or said CIO’s designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____ and **Gartner, Inc.**, by and through its Director of Legal Affairs (“GARTNER” or “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 “CONTRACTOR” is defined in the preamble of this Agreement and includes its successors.
- 1.4 “Director” shall mean the CITY’s Finance Department Director / Deputy Chief Financial Officer (Deputy CFO) or designee, or CIO or designee, unless otherwise specified.
- 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.

ARTICLE II

TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall begin upon the effective date of the ordinance awarding the contract and remain in full force and effect for a (3) three year period.
- 2.2 Renewals. The CITY shall have the option to renew under the same terms and conditions for up to two (2) additional one (1) year periods. The CIO or Deputy CFO, or their designee, shall have the authority to execute renewals on behalf of the City without further City Council action. An election by CITY not to renew this Agreement shall require no action or notification by the CITY to CONTRACTOR.
- 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 CONTRACTOR shall provide Independent Validation and Verification (IV&V) services for SAP, which includes the required services, verification services, and validation services described in **Exhibit A**, CITY's Request for Proposals (RFP) No. 23-044; RFx 6100016421, and as further detailed in **Exhibit C**, CONTRACTOR'S Statement of Work (SOW), including procurement support.
- 3.3 CONTRACTOR shall discharge its duties under this Agreement as a prudent expert solely in the interests of the City with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Agreement and in a manner that avoids conflicts of interest and self-dealing.

- 3.4 All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory to Director. CITY shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should CONTRACTOR's work not be satisfactory to Director; however, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should CITY elect not to terminate. CITY shall notify CONTRACTOR in writing of any decision to withhold payment. Should CITY elect to terminate, it will do so in accordance with 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 Director, of all services and activities set forth in this Agreement, CITY agrees to pay CONTRACTOR in accordance with **Exhibit B**, CONTRACTOR's BAFO (Best and Final Offer) Price Schedule.
- 4.2 CONTRACTOR may submit invoices to CITY upon completion of each deliverable, and as further detailed in **Exhibit C**, CONTRACTOR'S Statement of Work (SOW), including procurement support, in a form acceptable to CITY, which CITY shall pay within 30 days of receipt and approval by Director. 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, Finance 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 olga.bennett@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.
- 4.5 Final acceptance of work products and services require written approval by CITY. The approving official shall be the Director. Payment will be made to CONTRACTOR following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than 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 Provided, however, that CONTRACTOR may use, reproduce, display and distribute excerpts and data from the deliverables, either alone or together with other material, in the ordinary course of CONTRACTOR's business, so long as such excerpts and data do not identify CITY by name or contain any of the CITY's confidential or proprietary information, and provided further that CONTRACTOR retains all right, title and interest in and to its processes, benchmarking data and data collection tools, assessment models and pertinent methodologies such as Strategic Planning, CONTRACTOR's copyrighted proprietary research and other pre-existing materials and data, such as Data Collection Templates and Survey Tools for Applications and Infrastructure, and benchmark comparisons ("Preexisting Intellectual Property"). Nothing contained in this Agreement shall preclude CONTRACTOR from rendering services to others or developing work products that are competitive with, or functionally comparable to, the Services. CONTRACTOR shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the Services, provided that CONTRACTOR shall not use or disclose any of City's confidential information.
- 5.4 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 XI. 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 Agreement 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 XIII. SBEDA;
 - 7.4.2 Bankruptcy or selling substantially all of company's assets;
 - 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
 - 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

- 7.6 Regardless of how this Agreement is terminated, 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:

If intended for CONTRACTOR, to:

City of San Antonio
Attn: Craig Hopkins, Chief Information Officer
P.O. Box 839966
San Antonio, Texas 78283-3966

Gartner, Inc.
56 Top Gallant Road
Stamford, CT 06902-7700

With Copy to:

City of San Antonio
Attn: Troy Elliott, Deputy Chief Financial Officer
P.O. Box 839966
San Antonio, Texas 78283-3966

ARTICLE IX
INSURANCE

- 9.1 Prior to the commencement of any work under this Agreement, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY's Information Technology Services Department (ITSD). The certificate must be:
- 9.1.1 clearly labeled with the legal name of the event in the Description of Operations block;
 - 9.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and
 - 9.1.3 properly endorsed and have the agent's signature, and phone number.
- 9.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S ITSD. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 9.3 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.
- 9.4 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.
- 9.5 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 2. Employers' Liability | Statutory \$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. Independent Contractors | 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. |
| 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. Cyber Liability | \$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage. |

- 9.6 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.
- 9.7 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: ITSD
P.O. Box 839966
San Antonio, Texas 78283-3966

- 9.7 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.
- 9.8 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.
- 9.9 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.
- 9.10 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.
- 9.11 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.

- 9.12 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.
- 9.13 CONTRACTOR and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE X

INDEMNIFICATION

- 10.1 **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 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 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.**
- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. 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.
- 10.3 Defense Counsel - CITY shall have the right 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.

- 10.4 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.
- 10.5 Warranty: a) CITY is responsible for ensuring any materials furnished by the CITY in connection with a Statement of Work does not infringe any copyright, trademark, trade secret or other right of any third party. (b) CONTRACTOR warrants that the Deliverables, in the form provided to the CITY, do not infringe any copyright, trademark, trade secret or other right of any third party. (c) ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE INFORMATION IN THE DELIVERABLES HAS BEEN OBTAINED FROM SOURCES THAT CONTRACTOR BELIEVES TO BE RELIABLE. ALL DELIVERABLES SPEAK AS OF THE DATE OF DELIVERY TO THE CITY.
- 10.6 Limitation of Liability: Neither party shall be liable for any consequential, indirect, special or incidental damages, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the Services, whether or not advised of the possibility of such damages. Except for liability for personal injury or death or for damage to property caused by the negligence or willful misconduct of CONTRACTOR or its employees, CONTRACTOR's total liability arising out of this Agreement and the provision of the Services shall be limited to the fees paid by the CITY under this Agreement.
- 10.7 Audit: In the event CITY or its authorized agents carry out an audit or investigation that relates to this contract, CONTRACTOR undertakes to fully cooperate and facilitate the audit and/or investigation work and at the request of CITY, provide CITY or its authorized agents with access to the CONTRACTOR's personnel as well as any information and documents that may be required in connection with such audit and/or investigation. Should such audit and/or investigation determine that any funds paid by CITY have been paid in error per the terms of the Agreement; the Contractor shall reimburse such funds promptly.

ARTICLE XI
ASSIGNMENT AND SUBCONTRACTING

- 11.1 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.
- 11.2 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 Director in writing.
- 11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of 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 Director.
- 11.4 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 Director. 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.
- 11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should 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 XII

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 XIII

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

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

13.2 **Definitions.**

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

- 13.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.
- 13.2.3 **Award** – the final selection of a Contractor for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 13.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Contractor’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.
- 13.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective respondents and subcontractors that are ready, willing, and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.
- 13.2.6 **Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging

small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.

- 13.2.7 **City** – refers to the City of San Antonio, Texas.
- 13.2.8 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.
- 13.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.
- 13.2.10 **Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.
- 13.2.11 **Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its

industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

- 13.2.12 **Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 13.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.
- 13.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.
- 13.2.15 **Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.
- 13.2.16 **Good Faith Efforts** – documentation of the Contractor'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 Contractor'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 Contractor; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

- 13.2.17 **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]
- 13.2.18 **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.
- 13.2.19 **Individual** – an adult person that is of legal majority age.
- 13.2.20 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale, and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- 13.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this

business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

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

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

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

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

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

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

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

firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

- 13.2.26 **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).
- 13.2.27 **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:
- African-Americans: Persons with origins in any of the black racial groups of Africa.
- Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
- Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.
- 13.2.28 **Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.
- 13.2.29 **Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.
- 13.2.30 **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- 13.2.31 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

- 13.2.32 **Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 13.2.33 **Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).
- 13.2.34 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 13.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.
- 13.2.36 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- 13.2.37 **Responsive** – a firm’s submittal (bid, response, or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.
- 13.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- 13.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those

segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

- 13.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.
- 13.2.41 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- 13.2.42 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- 13.2.43 **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- 13.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.
- 13.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.
- 13.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement

between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.

- 13.2.47 **Suspension** – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.
- 13.2.48 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Contractor's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Contractor's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.
- 13.2.49 **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

13.3 SBEDA Program Compliance – General Provisions

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

- 13.3.1 Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms,

as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

- 13.3.2 Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;
- 13.3.3 Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
- 13.3.4 Contractor shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
- 13.3.5 Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
- 13.3.6 Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- 13.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm

utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

- 13.3.8 Contractor acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Contractor for this project has registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and Contractor has represented to City which primary commodity codes each Subcontractor will be performing under for this contract. City recommends all Subcontractors to be registered in the CVR. For more information, please see link: <http://www.sanantonio.gov/SBO/Compliance>.

13.4 SBEDA Program Compliance – Affirmative Procurement Initiatives.

- 13.4.1 Mentor Protégé Program: In accordance with the SBEDA Ordinance, Section III. D. 5. (f), this contract is being awarded pursuant to the Mentor-Protégé Program, and as such, CONTRACTOR agrees to serve in the City's Mentor Protégé Program.

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

- 13.5 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.

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

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

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

ARTICLE XIV AMENDMENTS

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

ARTICLE XV COMPLIANCE

- 15.1 CONTRACTOR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 15.2 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.

ARTICLE XVI
INTELLECTUAL PROPERTY

16.1 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.

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

Either:

16.2.1 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

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

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

16.3 CONTRACTOR further agrees to:

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

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

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

Provided that:

16.3.4 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;

16.3.5 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;

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

16.3.7 The CITY promptly provide 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 XVII

NONWAIVER OF PERFORMANCE

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

ARTICLE XVIII

LICENSES/CERTIFICATIONS

CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated to provide services hereunder (1) is and at all times during the term of this Agreement will be a member in good standing of the Casual Actuarial Society and (2) has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XIX

LAW APPLICABLE & LEGAL FEES

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

19.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other

matter in question between CITY and 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.

- 19.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XX

LEGAL AUTHORITY

The signer of this Agreement for 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 XXI

PARTIES BOUND

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

ARTICLE XXII

CAPTIONS

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

ARTICLE XXIII

CONFIDENTIAL INFORMATION

- 23.1 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 Agreement.
- 23.2 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.
- 23.3 If CONTRACTOR receives inquiries regarding documents within its possession pursuant to this contract, CONTRACTOR shall immediately forward such request to the CITY for disposition.

23.4 To the maximum extent permitted by law and any applicable open records statute, rules or regulations,

(a) The parties agree to keep confidential and not to use or disclose to any third parties any non-public business information of the other party learned or disclosed in connection with services provided pursuant to this Agreement and any amendments thereto, including the Contractor Materials. The obligation of the parties with respect to the Confidential Information shall terminate with respect to any particular portion of the Confidential Information if and when: (i) it is in the public domain at the time of its communication; (ii) it is developed independently by the receiving party without use of any confidential information; (iii) it enters the public domain through no fault of the receiving party subsequent to the time of the disclosing party's communication to the receiving party; (iv) it is in the receiving party's possession free of any obligation of confidence at the time of the disclosing party's communication; (v) it is communicated by the disclosing party to a third party free of any obligation of confidence; or (vi) the receiving party has the disclosing party's written permission.

(b) Each party shall provide notice to the other of any demand made upon it under lawful process to disclose or provide any of the other party's confidential information. The receiving party agrees to cooperate with the disclosing party, at the disclosing party's expense, if the disclosing party elects to seek reasonable protective arrangements or oppose such disclosure. Any confidential information disclosed pursuant to such lawful process shall continue to be confidential information.

ARTICLE XXIV **SEVERABILITY**

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

ARTICLE XXV **STATE PROHIBITIONS ON CONTRACTS**

25.1 This Article only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

25.2 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.

25.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

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

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

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

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

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

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

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

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

ARTICLE XXVI

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

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. 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 XXVII

CONFLICT OF INTEREST

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

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

27.2 Pursuant to the subsection above, CONTRACTOR warrants and certifies, and this Agreement 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 this 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 XXVIII

EXECUTION IN COUNTERPART

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

ARTICLE XXIX

AUTOPEN OR ELECTRONIC SIGNATURE

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

ARTICLE XXX
PROHIBITED CONTRIBUTIONS

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

ARTICLE XXXI
INCORPORATION OF 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 Proposals (RFP) No. 23-044; RFx 6100016421, including any addendums, exhibits, and attachments

Exhibit B CONTRACTOR’s BAFO (Best and Final Offer) Price Schedule

Exhibit C CONTRACTOR’s Statement of Work (SOW)

Exhibit D CONTRACTOR’s Proposal submitted in response to (RFP) No. 23-044; RFx 6100016421, including BAFO Proposal Amendment dated July 19, 2023

ARTICLE XXXII
ENTIRE AGREEMENT

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

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

CITY OF SAN ANTONIO

GARTNER, INC.

| | |
|---------------------|-----------------------------------------|
| _____ | _____ |
| (Signature) | <i>Scott Lyon</i> (Signature) |
| Printed Name: _____ | Printed Name: Scott Lyon |
| Title: _____ | Title: Director of Legal Affairs |
| Date: _____ | Date: Sept. 11, 2023 |

Approved as to Form:

Assistant City Attorney