

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
VENUE SPONSORSHIP PROGRAMS FOR THE ALAMODOME**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”), acting by and through its City Manager or designee, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 and The Superlative Group, Inc., by and through its Chief Operating Officer (“Contractor”), both of which may be referred to collectively as the “Parties”.

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

**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 “Contractor” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Director” shall mean the director of City’s Convention and Sports Facilities Department.
- 1.4 “Existing Sponsorship Agreement” shall have the meaning set forth in Section 4.9 of this Agreement.
- 1.5 “Sponsor” shall have the meaning set forth in Section 4.5 of this Agreement.
- 1.6 “Sponsorship Agreement” shall have the meaning set forth in Section 4.5 of this Agreement.
- 1.7 “Sponsorship Gross” shall have the meaning set forth in Section 4.6 of this Agreement.

**II. TERM**

- 2.1 Unless extended or sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on \_\_\_\_\_ and shall terminate three (3) years after the commencement date of Phase II.

- 2.2 The term for the Development Phase (Phase I) shall begin \_\_\_\_\_ and terminate within ninety (90) days of Agreement execution or the completion of the Phase I tasks outlined in the Scope of Services and the City's acceptance of the work product, whichever is sooner. The term for Phase II will begin immediately following Phase I and extend for three (3) years.
- 2.3 Following the initial three (3) year term of Phase II, this Agreement may be renewed, at City's option, under the same terms and conditions for two (2) additional one (1) year periods. Renewals shall be in writing and signed by Department Director or designee, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding.

### III. SCOPE OF SERVICES

- 3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services ("Project") in exchange for the compensation described in Article IV. Compensation.
- 3.2 Contractor must perform the following essential job functions while performing all work under this Agreement:
- Ability to work in tandem with Alamodome Sales and Marketing Team;
  - Follow established guidelines established by the City of San Antonio;
  - Identification and development as well as implement strategies of current/emerging trends to drive Corporate Sponsorship sales and proactive marketing programs;
  - Participate in the review, evaluation, and design processes for short-and long-range venue marketing and sales efforts;
  - Assist in developing and executing advertising programs for both venue and clients; and
  - Assist in the development of new Sponsorship programs to include, but not limited to sponsor inventory list, existing and new Star partner deals, the coordination of existing and tenant sponsor rights, creating new and competitive rate structure, as well as new sponsor presentations and proposals, etc. ("Sponsorship Program");
- 3.3 The work under this Agreement is divided into two phases:
- 3.4 **Phase I:** Contractor will, at a minimum, complete the following tasks in the Development Phase ("Phase I") of the Agreement:
- 3.4.1 Inventory all existing and proposed sponsorship assets, including commercial advertising locations. These advertising locations include static, digital signage, display locations and temporary event signage locations both inside and outside the Alamodome
- 3.4.2 Develop sponsorship assets and inventories with concepts including, but not limited

to: Venue Naming Rights and Star Sponsorship programs

3.4.3 Analyze sponsorship inventory within a geographic framework that contemplates opportunities not only within the facilities, but on the premises outside the facilities and beyond;

3.4.4 Catalog and classify sponsorship inventory into the following within the following categories:

- Acquired Content
- Business Development
- Digital and Social Marketing
- Event Specific Branding
- Hospitality
- Intellectual Property
- Landmarks
- Media and Technology
- Licensed Product and Merchandise
- Naming Rights – Venue and Specific Areas
- Presenting Sponsorships
- Product and Service Integration
- Promotions
- Signage – Marquee, Static, Digital, Center Hung, Scoreboards, IPTV's, and other Marketing components.
- Suites
- Tickets
- Partnership Programs with Visit SA to enhance economic impact with area hotels and businesses;

3.4.5 Valuation of Sponsorship Assets;

3.4.6 Utilize an analytical, market-based methodology to review, adjust and establish pricing for all sponsorship inventory based on true market value and incorporating the following:

- Multi-faceted evaluation criteria
- Economic landscape
- Specific property nuances
- Premium assets and business generators
- Realistic contrast to a strictly “impression/media-based” methodology
- Customary investment assessment concepts
- Initiation and execution
- Commercial appeal
- Asset concentration
- Consumer experience

- Networking and business development
- Event quantity and quality
- Seasonality
- Market size
- Venue prominence;

3.4.7 Provide City with a Strategic Plan for Sponsorship Assets;

3.4.8 Rank sponsorship assets and establish customized initial sponsor packages with valuations;

3.4.9 Review existing commercial rights and incorporate insights and recommendations on how to address these existing rights;

3.4.10 Evaluate commercial categories, identify relevant industry categories, and establish sales goals in each;

3.4.11 Evaluate targeted categories for sponsorship sales and initial sponsor packages using a methodology that maximizes sponsor rate of return;

3.4.12 Identify potential global, national, regional, state, and local businesses within the targeted categories that demonstrate the best fit for the Sponsorship Program;

3.4.13 Develop a strategy for increasing sponsorship assets;

3.4.14 Develop a naming rights and Star Sponsorships proposal, as well as other venue and event sponsorship programs for the Alamodome;

3.4.15 Develop Implementation program, including establishing measurable goals and objectives, creating a Program budget, forecasting revenue and expenses, establishing policies and procedures, developing a marketing plan, addressing challenges and constraints; and

3.4.16 Develop standard agreement templates for various types of sponsorships and provide to City.

3.5 **Phase II:** Contractor shall, at a minimum, perform the following tasks in Phase II in collaboration with City:

3.5.1 Develop and implement a marketing plan and program, including the development, dissemination and management of marketing materials and tools;

3.5.2 Research potential sponsorships, solicit marketing goals and objectives, and incorporate those goals and objectives into any competitive solicitations for sponsorships (i.e. RFPs);

3.5.3 Develop and administer competitive solicitations for sponsorships including:

- Ensuring compliance with procurement regulations
- Publishing and communicating solicitations
- Conducting pre-submittal conferences and tours.
- Developing and issuing addendums
- Reviewing and evaluating proposals
- Drafting and negotiating sponsorship agreements
- Presenting proposed sponsorships to interested parties
- Managing sponsorship agreements and ensure fulfillment of contractual obligations
- Possible deal elements to include consideration for:
  - Unsold Ticket and Suite Inventory
  - Media Conversion Opportunities – Sponsor provides media buys to include events at the facility.
  - Event Promotions
  - Group Sales

3.5.4 Existing Contracts. Contractor understands and acknowledges that there are existing long and short-term commercial rights inside and outside the Alamodome. In addition, many of the events held at the Alamodome already have commercial rights via sponsorship agreements. Additionally, there are contractors that provide goods and/or services to the Alamodome and/or its clients and visitors on a preferred or exclusive basis. Contractor shall take all these existing contracts and the rights they grant into account when performing services under this Agreement.

3.5.5 All advertising must be reviewed and approved by City prior to placement and must conform to all applicable governmental laws, regulations, standards, and policies and City's approval will be issued by the City Manager or his designee. Exterior signage is governed by Chapter 28 of the City of San Antonio's City Code of Ordinances, including on-premises sign regulations. The City Code is available at [SanAntonio.gov](http://SanAntonio.gov). Advertising shall also conform to the City of San Antonio Commercial Advertising Policy attached to and incorporated as Exhibit I. Contractor shall not be entitled to any payment from City for advertising placed under this Agreement that was not approved in advance by the City Manager or his designee.

3.5.6 All advertising shall be honest and in good taste.

3.5.7 Advertising claims should be substantiated and qualifying information about the attributes or use of a product shall be disclosed whenever qualifying information is required to avoid misleading consumers.

3.5.8 In order to determine the acceptability of advertising material, City has the right, but not the obligation, to investigate the advertiser and the accuracy of all statements and claims made in advertising copy, including requiring the advertiser to have substantiation or documentation providing a reasonable basis for the claims.

3.5.9 City reserves right to accept or reject, at any time, advertising for any product or service submitted for display and may require elimination or revision of any material in advertising copy which violates City standards, policies or guidelines; federal, state or local laws or regulations; or is otherwise contrary to the public interest.

3.5.10 City may require revision of any advertising to meet emergency circumstances or situations of unusual significance and reject any advertising that is, or might be, injurious or prejudicial to the interests of the public, City or honest advertising and reputable business in general.

3.5.11 In addition, City reserves the right to temporarily turn off, cover or remove advertising:

- When there is a direct or indirect competing sponsor of an event
- When doing so is a requirement for hosting a particular event
- For events in which the lighting is darkened
- For events in which it would not be in keeping with the tenor or spirit of the event
- When it is in the best interest of City

3.6 Contractor and City will collaborate to determine which meetings require Contractor's presence in-market and which meetings may be conducted via video conferencing when negotiating Sponsorship Agreements, as defined in Section 4.5.

3.7 All work performed by Contractor shall be performed to the reasonable satisfaction of Director, with such approval and satisfaction not to be unreasonably withheld, conditioned, or delayed. The determination made by Director shall be final, binding and conclusive on all Parties. 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. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

3.8 With the exception of City employees and personnel, Contractor shall serve as the exclusive agent of City to provide the services contemplated in this Agreement during the term of this Agreement.

#### **IV. COMPENSATION TO CONTRACTOR**

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner of all services and activities set forth in this Agreement, City agrees to pay Contractor 22.5% of Sponsorship Gross, after the deduction of any agreed activation expenses. Commission due to Contractor is to be paid to Contractor in the same manner as follows:

Example: \$100,000 Sponsorship Gross minus \$20,000 activation expenses=\$80,000. Contractor is then to be paid 22.5% of \$80,000, which equals \$18,000.

- 4.2 City shall be solely responsible for and shall directly collect all Sponsorship Gross. Upon receipt of Sponsorship Gross, City shall notify Contractor and provide Contractor with adequate information to generate an invoice as set forth in this Section 4.2. Contractor shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt of Sponsorship Gross. At the time of payment to Contractor, City shall supply Contractor with a statement showing the identity of the entity that made payment, the amount paid, the date of receipt, and the calculation of commission payable to Contractor.
- 4.3 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties 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 and approved by the San Antonio City Council, if required.
- 4.4 Final acceptance of work products and services require written approval by City. The approving official shall be 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.
- 4.5 Each entity secured by Contractor and accepted by City that subsequently enters into a "Sponsorship Agreement" (defined below) with City shall be referred to as a "Sponsor." If any entity, including any charitable corporate foundation related to any Sponsor, elects to make a contribution or a barter or trade in support of the Alamodome that is acceptable to City, then subject to the terms of the applicable Sponsorship Agreement, such entity making the contribution shall also be deemed a Sponsor and the contribution shall be deemed Sponsorship Gross. City will only accept such contributions or barter or trades that result in an overall economic benefit to City factoring in the commission to be paid to Contractor. Those contracts or agreements, including renewals, extensions and modifications thereof, secured by Contractor and accepted by City by which any entity enters to receive sponsorship, naming rights, presenting sponsor, official sponsor, category partnership, pouring rights, seating, suites, advertising, hospitality, or any other rights, benefits, or recognition, in whole or in part, in connection with the Alamodome are herein referred to as "Sponsorship Agreements."
- 4.6 As used herein, "Sponsorship Gross" means all amounts paid or payable by or on behalf of any entity as consideration for the right to receive any sponsorship, naming rights, presenting sponsor, official sponsor, category partnership, pouring rights, seating, suites, advertising, hospitality, or any other rights, benefits, or recognition, in whole or in part, in connection with the Alamodome, regardless of whether such amounts are paid during the term hereof or during any period following the last day of the term of this Agreement, pursuant to:

4.6.1 Any Sponsorship Agreement which is executed with a Sponsor during the term of this Agreement;

4.6.2 Any Sponsorship Agreement which is executed within twelve (12) months following the expiration or termination of the term hereof with any entity that was previously solicited by Contractor to become a Sponsor and with which Contractor had conducted good-faith discussions concerning the possibility of such entity becoming a Sponsor; and

4.6.3 Any renewal, extension, or modification of any such contract or agreement described in Sections 4.6.1, 4.6.2, 4.8, and 4.9. Contractor's commission on renewals, extensions, or modifications of Sponsorship Agreements shall be based on the Sponsorship Gross to be paid to City as contemplated in the original Sponsorship Agreement. In the event there is no renewal, extension, or modification contemplated in the original Sponsorship Agreement, then Contractor shall be entitled to commission on Sponsorship Gross for any renewal, extension, or modification that Contractor negotiates on behalf of City. Commission to be paid to Contractor for renewals, extensions, or modifications of a Sponsorship Agreement shall not include commission on Sponsorship Gross paid to City in subsequent renewals, extensions or modifications negotiated solely by City or a subsequent party under contract with City to provide services similar to those in this Agreement.

- 4.7 If any Sponsor shall provide City with any budget relieving "in-kind" consideration (for example, products, services, advertising commitments, etc.), then such in-kind consideration shall be considered Sponsorship Gross and shall be commissionable to Contractor at the rate described in section 4.1 above. In-kind consideration shall be valued at the valuation set forth in the relevant Sponsorship Agreement, or if there is no such valuation, at the fair market value thereof.
- 4.8 If Contractor assists City in securing a Sponsorship Agreement with an entity that Contractor did not solicit, Contractor shall be entitled to the commission set forth in section 4.1 on Sponsorship Gross for such Sponsorship Agreement. However, Contractor shall not be entitled to commission on any sponsorship agreements both solicited and negotiated solely by City.
- 4.9 In the event City has an existing Sponsorship Agreement ("Existing Sponsorship Agreement") in place with an entity, and Contractor secures that entity to enter into a subsequent Sponsorship Agreement or assists City and such entity to extend, renew, or modify the current Existing Sponsorship Agreement, Contractor shall receive commission on all Sponsorship Gross that exceeds the amount set forth in the Existing Sponsorship Agreement. For purposes of this Agreement, such entity shall be considered a Sponsor and such agreement shall be considered a Sponsorship Agreement. For purposes of example only, if City has a Sponsorship Agreement with Company X for \$75,000 per year and Contractor secures a subsequent Sponsorship Agreement with Company X for \$100,000 per year, Contractor shall receive 22.5% of \$25,000 (\$100,000-\$75,000) per year for the term of the subsequent Sponsorship Agreement.

- 4.10 Notwithstanding anything herein to the contrary, any and all consideration owed to Contractor pursuant to this Agreement that is derived from Sponsorship Gross, and the City's obligation to pay such consideration, shall survive the termination or expiration of this Agreement.
- 4.11 For the avoidance of doubt, Sponsorship Gross shall include all applicable amounts paid pursuant to Sections 4.8 and 4.9.
- 4.12 Contractor shall not be entitled to any commission for the following events, whose licensees are able to secure their own sponsorships:
- 4.12.1 Alamo Bowl;
  - 4.12.2 National Collegiate Athletic Association;
  - 4.12.3 XFL;
  - 4.12.4 UTSA; and
  - 4.12.5 Future athletic team tenant holding home games at the Alamodome
- 4.13 Alamodome licensees have the right to activate sponsorships for their events, including but not limited to Live Nation, AEG Presents, Feld Entertainment, Billboard Music Awards, as well as private events and future world class events. Contractor shall not be entitled to any commission for sponsorships entered into by Alamodome licensees.

## **V. OWNERSHIP OF DOCUMENTS**

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement (excluding Contractor IP as defined below) is the exclusive property of City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor. Notwithstanding the foregoing, Contractor shall retain the ownership rights, title, and interest to all proprietary information and intellectual property that it owned (in whole or in part) prior to entering into this Agreement, including, but not limited to, trade secrets, technology, formulas, calculations, algorithms, or information pertaining to business operations and strategies, information pertaining to customers and pricing, copyrights, patents, trademarks, and services marks (collectively, the "Contractor IP"). However, Contractor hereby grants to City a perpetual, irrevocable, and transferable license and right to use the Contractor IP contained in the deliverables to be produced by Contractor under this Agreement.
- 5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, subject to section 5.1 above.

## **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 under this Agreement (“documents”), and shall make such materials available to 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, and the record retention period established in this Agreement, 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 under this Agreement for a period of four (4) years (“retention period”) from the date of termination of this 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, 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 reasonable times, as deemed reasonably 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 in this Agreement. Contractor understands and agrees that City will process and handle all such requests.

## VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of its provisions.
- 7.2 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 the following event, which shall constitute an Event for Cause under this Agreement:

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

- 7.3 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.3 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.

- 7.3.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA. However, the Parties acknowledge and agree that Contractor will be performing one hundred percent (100%) of the work to be performed under this Agreement;
  - 7.3.2 Bankruptcy or selling substantially all of company's assets;
  - 7.3.3 Failing to perform or failing to comply with any covenant required;
  - 7.3.4 Performing unsatisfactorily; or
  - 7.3.5 Any material breach of the terms of this Agreement, as determined in the reasonable discretion of City.
- 7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties required under this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.5 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, 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.
- 7.6 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.
- 7.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default or other action.
- 7.8 Should City, in its sole discretion, cease utilizing the Alamodome as a multipurpose domed stadium for public sporting and entertainment events, then City may terminate this Agreement. In the event City terminates due to such cessation, all such Sponsorship Agreements shall automatically terminate and Contractor shall not be entitled to any further payment for such Sponsorship Agreements. In the event ownership of the Alamodome is transferred to a third party, City shall use reasonable business efforts to ensure that its obligations arising under this Agreement, as well as Sponsorship Agreements secured for City by Contractor, are transferred to, and assumed by, the subsequent owner of the Alamodome.
- 7.9 As also stated in Section 4.10 of this Agreement, notwithstanding anything to the contrary herein, any and all consideration owed to Contractor pursuant to this Agreement that is

derived from Sponsorship Gross, and City's obligation to pay such consideration, shall survive the termination or expiration of this Agreement.

## VIII. NOTICE

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

If intended for City, to:

City of San Antonio  
Convention and Sports Facilities Department  
Attention: Patricia Muzquiz Cantor  
900 E. Market  
San Antonio, TX 78205

If intended for Contractor, to:

The Superlative Group  
Attention: Kyle Canter, Chief Operating  
Officer  
2843 Franklin Blvd.  
Cleveland, Ohio 44113

## IX. NON-DISCRIMINATION

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

## X. INSURANCE

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

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Convention and Sports Facilities Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

- 10.2 City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 10.3 Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If Contractor claims to be self-insured, Contractor must provide a copy of their declaration page so City can review their deductibles:

<i><b>INSURANCE TYPE</b></i>	<i><b>LIMITS</b></i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	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. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.  <hr/> Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
5. Umbrella or Excess Liability Coverage	\$5,000,000 per occurrence/\$5,000,000 annual aggregate combined limit Bodily Injury (including death) and Property Damage.

6. 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.

10.4 Contractor must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Contractor and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Contractor shall provide City with subcontractor certificates and endorsements the subcontractor starts work.

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

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

10.6 Contractor’s insurance policies must contain or be endorsed to contain the following provisions:

- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers’ compensation and professional liability policies;

- Endorsement that the “other insurance” clause shall not apply to City where City is an additional insured shown on the policy. City’s insurance is not applicable in the event of a claim;

- Contractor shall submit a waiver of subrogation to include general liability and auto liability policies in favor of City. **CONTRACTOR shall FULLY INDEMNIFY, DEFEND and HOLD HARMLESS CITY from any worker’s compensation claims while on CITY property under this Agreement and CONTRACTOR waives its right to subrogate and/or recoup monetary damages for any worker’s compensation claims;** and

- Provide 30 days advance written notice directly to City of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- 10.7 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Contractor to stop work and/or withhold any payment(s) which become due to Contractor under this Agreement until Contractor demonstrates compliance with such requirements.
- 10.9 Nothing contained in this Agreement shall be construed as limiting the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Agreement.
- 10.11 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 10.12 Contractor and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

## XI. INDEMNIFICATION

- 11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Contract, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 11.2 The provisions of this indemnity are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise City in writing within 24 hours of any claim or demand against 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. 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 Article.
- 11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation 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 council of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation - In any and all claims against any party indemnified under this Agreement 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 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.
- 11.5 Trademarked and Copyrighted Usage Contractor agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of trademarked and/or copyrighted materials in the Project complies with United States and any other applicable trademark and copyright law.
- 11.6 Trademark and Copyright Indemnification **CONTRACTOR agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, at its own expense, CITY and its officials, agents and employees from any and all liability arising from copyright infringement and/or consequential damages that others may suffer as a result of the use by CONTRACTOR of patented, trademarked and/or copyrighted materials in its work under this Agreement.**

## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.
- 12.2 Contractor does not intend to use any subcontractors in the performance of this Agreement. However, in the event Contractor elects to use subcontractors in the performance of this Agreement, the subcontractor(s) shall be approved by City, as evidenced by passage of an ordinance, if required, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting shall be subcontracted only by written contract and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this 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 City.
- 12.4 Except as otherwise stated in this Agreement, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties under this Agreement, by transfer, by subcontracting or any other means, without the consent of City, as evidenced by passage of an ordinance, if required. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

## **XIII. INDEPENDENT CONTRACTOR**

- 13.1 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 under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine

of “respondent superior” shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The Parties understand and agree that 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 Contractor under this Agreement and that Contractor has no authority to bind City. Any arrangement or understanding binding City, or by which any Sponsor obtains any rights or benefits in connection with the Alamodome and City, shall be set forth in a written agreement approved by City and executed by City and the Sponsor involved. City shall provide Superlative with a copy of the Sponsorship Agreement and any modification or renewal thereof effected at any time.

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

- 14.1 SBEDA Program. City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to City. The SBEDA Ordinance Compliance Provisions contained in this Exhibit II of this Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement.

#### **XV. CONFLICT OF INTEREST**

- 15.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- (i) a City officer or employee;
  - (ii) his parent, child or spouse;
  - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
  - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.
- 15.2 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of City.
  - (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with City's Ethics Code.
- 15.3 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

## **XVI. AMENDMENTS**

- 16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to its terms, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance, when required.

## **XVII. SEVERABILITY**

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

## **XVIII. LICENSES/CERTIFICATIONS**

- 18.1 Contractor warrants and certifies that Contractor and any other person designated to provide services under this Agreement 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 under this Agreement.

## **XIX. COMPLIANCE**

- 19.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 19.2 Non-Discrimination. As a Party to this Agreement, 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 in this Agreement.

## **XX. NONWAIVER OF PERFORMANCE**

- 20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee 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 contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, 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 under this Agreement or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.

## **XXI. LAW APPLICABLE & LEGAL FEES**

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED UNDER THIS AGREEMENT ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXII. LEGAL AUTHORITY**

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

## **XXIII. PARTIES BOUND**

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

## **XXIV. CAPTIONS**

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

## **XXV. INCORPORATION OF EXHIBITS**

- (1) Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

Exhibit I: City's Advertising Policy

Exhibit II: Small Business Economic Development Advocacy Program

## **XXVI. ENTIRE AGREEMENT**

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

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

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that:

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

“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.

“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.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City relies on Contractor’s verification. If found to be false, City may terminate this Agreement for material breach without providing an opportunity to cure.

**XXVII. FORCE MAJEURE**

28.1 If either Party is delayed, prevented, prohibited, or materially impaired from performing any of its obligations under this Agreement (other than a payment obligation hereunder) as a result of a force majeure event, including, but not limited to, acts of God, adverse weather conditions, natural catastrophe, labor disputes, strikes, war, insurrection, terrorist action, government restrictions, including those based on pandemics, epidemics, public health crisis or emergency, civil commotion, riots, fire, flood, or other cause beyond the Parties’ reasonable control, then such Party’s failure to perform such obligation shall not constitute a breach of this Agreement and such Party shall be excused from performance of such obligation for a period of time equal to the period during which the force majeure event delays, prevents, prohibits, or materially impairs such performance. Notwithstanding the foregoing, a force majeure event does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an occurrence that merely makes performance more difficult or expensive. Additionally, should an event of force majeure close the Alamodome for a period of time requiring adjustments to the Sponsorship Gross to be paid to City under all or some Sponsorship Agreements, the adjusted Sponsorship Gross to be paid to City will be utilized in determining commission on Sponsorship Gross to be paid to Contractor as it relates to the effected Sponsorship Agreement(s).

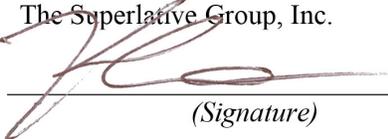
**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**CONTRACTOR**

The Superlative Group, Inc.

\_\_\_\_\_  
*(Signature)*

  
\_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Name: Kyle Canter  
Title: Chief Operating Officer  
Date: 09/13/2023

Approved as to Form:  
Assistant City Attorney

**Exhibit I**  
**CITY'S ADVERTISING POLICY GUIDELINES**

1.1 The purpose of the sale of advertisements by the City of San Antonio is to generate revenue and other valuable consideration. To achieve this purpose, the City must make certain reasonable content-based distinctions in order to preserve advertising space for this intended use.

1.2 These guidelines apply to the sale of advertising space in City facilities and on City property that are non-public forums, where such advertising is permitted. A non-public forum is one that is not traditionally open for public discourse. Such a forum is not created by inaction or by permitting limited discourse. A government creates a public forum only by intentionally opening a nontraditional forum for public discourse. That is not the intent of the City of San Antonio in initiating any activities governed by these guidelines. The sale of advertising by the City of San Antonio is not meant to designate any of the advertising spaces as public forums for all expressive activity, but to reserve them for commercial speech. The City of San Antonio is acting in a proprietary capacity to raise money.

1.3 These guidelines shall not apply to any City-owned property leased by the City to another entity unless said guidelines are incorporated into the agreement between the City and the entity and/or the agreement between the entity and an advertiser. Additionally, these guidelines shall not apply in situations where a third-party contractor is responsible for the sale and management of advertising at a City facility, such as the San Antonio Municipal Airport.

1.4 The word "advertise," and any of its forms or derivatives, including the word "advertisement," shall mean the depiction or presentation on any personal property, sign, bench or fixed or permanent structure of any name, word, statement, drawing, picture, painting, mark, symbol, logo, motto or slogan for the purpose of drawing attention to a business, trade, product or activity and/or inducing the purchase or use of any specific item of commerce.

1.5 Only advertisements that propose a commercial transaction will be considered by the City. A commercial advertisement is one that has as its sole purpose the promotion of a product for sale or a service for hire, does not convey, whether expressly or impliedly or intentionally or unintentionally, any message regarding any political matter, social or religious issue or viewpoint of any person or any entity and would not cause the City's property upon which the advertisement is placed to become a public forum.

1.6 The City reserves the right to deny advertising space to any entity when its use does not serve the best interest of the City.

1.7 The City must approve of the type, location, size, content and duration of an advertisement prior to its placement.

1.8 Advertisements deemed objectionable by the City after placement, regardless of prior approval by the City, shall not be used and shall be immediately removed by the Advertiser at the Advertiser's sole expense.

1.9 All advertisements must maintain the appearance of neutrality on controversial issues.

1.10 No advertisements shall be permitted that the City deems are lewd, obscene, vulgar or unsuitable for immature audiences.

1.11 No advertisement shall be permitted that is false, misleading or deceptive or that relates to unlawful or illegal goods, services or activities.

1.12 No advertisement shall be permitted that promotes or depicts violence or anti-social behavior or presents a danger of causing riot, disorder or other threat to public safety, peace or order.

1.13 No advertisement shall be permitted that holds up an individual, group of individuals or an entity to public criticism, derision or embarrassment or that defames an individual, group of individuals or an entity.

1.14 Advertisement for certain products or services shall not be permitted:

1.14.1 X or R-rated movies;

1.14.2 tobacco products;

1.14.3 alcohol products (advertisements for such products may be permitted in certain facilities when in the best interest of the City and deemed appropriate by the City);

1.14.4 birth control products or information (advertisements for such products may be permitted in certain facilities when in the best interest of the City and deemed appropriate by the City);

1.14.5 drug paraphernalia;

1.14.6 pornography;

1.14.7 adult-only entertainment or sexually-oriented businesses;

1.14.8 political advertising;

1.14.9 religious advertising;

1.14.10 pawn shops;

1.14.11 massage parlors;

1.14.12 tattoo parlors;

1.14.13 check cashing businesses; and

1.14.14 firearms

1.15 The restrictions in Section 1.14 shall not apply to temporary, non-permanent advertising related to the activities of a particular group occupying a City facility under an agreement with the City when such advertising is directed at and presented to the members of that group.

1.16 Advertisements may not represent a product or service which presents a conflict of interest with any policy, objective or mandate of the City, including these guidelines.

1.17 Advertisements may not be placed by a firm awaiting approval from the City Council on any matter unrelated to these guidelines or a firm with a pending lawsuit against the City.

1.18 Advertising space sold under these guidelines is reserved solely for commercial advertising for products and services that do not directly compete with an existing commercial interest of the City.

1.19 These guidelines shall be consistently enforced and an advertisement shall never be excluded based on the viewpoint it advocates.

1.20 The City may enter into contracts or agreements with private individuals or organizations to provide advertising space or donor recognition on City owned real and personal property as may be described in these guidelines in exchange for cash, equipment, supplies services or other valuable consideration.

1.21 Any such contract or agreement shall be subject to the laws and regulations of the United States, the State of Texas and local ordinances, codes, regulations and these guidelines.

1.22 No such contract or agreement shall permit an advertisement that in any way gives the appearance or impression that any commercial product or service is endorsed or recommended by the City or any of its agencies, departments or employees. This shall not prevent the City from licensing a commercial product or service to use the phrase “the official \_\_\_\_\_ of the City of San Antonio” or a similar phrase.

1.23 The City reserves the right to amend these guidelines at any time that it deems necessary.

**Exhibit I1**  
**SMALL BUSINESS ECONOMIC DEVELOPMENT**  
**ADVOCACY (SBEDA) PROGRAM**

I. 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.

II. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

**M/WBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 8. (b), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, RESPONDENT affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), RESPONDENT agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

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

**Subcontractor Diversity:** The City of San Antonio strongly encourages each bidder to be as inclusive as possible and to reach out to all segments of the M/WBE community. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio **Other Services** industry, as reflected in the City's Centralized Vendor Registration system for the month of September 2022, African-American owned firms represent approximately 3.75% of available subcontractors, Hispanic-American firms represent approximately 10.18%, Asian-American firms represent approximately 0.66%, Native American firms represent approximately 0.10%, and Women-owned firms represent approximately 3.55% of available **Other Services** subcontractors

### III. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

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

**Exception Request** - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3)

the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

#### IV. SBEDA Program Compliance – General Provisions

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

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

reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

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

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

#### V. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; 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).

#### VI. 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.

## VII. 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.

## VIII. Definitions

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

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

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process.

(Contract awards are distinguished from contract payments, the first, only reflect the anticipated dollar amounts the second, reflect actual dollar amounts that are paid to a contractor under an awarded contract).

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

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

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

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

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

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

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

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

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

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

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

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

utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

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

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

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

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

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

**Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint

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

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

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

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

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

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

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

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE,

the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

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

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

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

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

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

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

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

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

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

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

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is

defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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