

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
DISABILITY CONSULTING SERVICES**

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 the San Antonio Office of Emergency Management and BCFS Health and Human Services, Emergency Management Division (BCFS HHS EMD) (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

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

**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 “Consultant” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Director” shall mean the director of San Antonio Office of Emergency Management (SAOEM).

**II. TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 3, 2021, and terminate on September 30, 2022.
- 2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.
- 2.3 A key to success of this project is reliant on-time turnaround of deliverables. Due to the short timeline, meeting the deliverables stated in the proposal can only be accomplished if commitments are kept as outlined in the timeline, including the timely delivery by City departments of requested documents for review to develop the gap analysis and recommendation reports. Contractor shall not be liable for failure to meet contract deadlines if documents are not received in a timely fashion.

**III. SCOPE OF SERVICES**

- 3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. The Scope of Services includes the following:

- Conduct an in-person meeting with SAOEM to coordinate with the SAOEM to determine specific plans, policies, programs, and procedures that will be included in this project, and determine and agree upon the specific project plan including milestones and associated deadlines.
- Conduct an in-person project initial kick-off meeting with SAOEM and any other selected departments of the City. The purpose of the Kickoff Meeting will to roll out project, provide training on disability inclusion, garner engagement and buy in from City departments, and delineate responsibilities of department participants.
- Conduct a review of selected emergency plans and programs regarding people with disabilities and other access and functional needs. The review will also entail interviews with city staff and departments to obtain information that may not be documented in existing plans. BCFS HHS EMD staff will met one on one with departments as needed to gather required information. The intent will be to review all Emergency Management related plans, including the Basic Emergency Operations Plan and associated 22 Annexes, Family Reunification and Family Assistance Plan, Hazard Mitigation Plan, IMT hurricane EOP, applicable SAFD response plans, Crisis Communication Plan, Pandemic Preparedness Plan, applicable SAPD response plans, THIRA/HIRA, vendor contracts and any additional city department plans that relate to emergency preparedness. Additionally, during the review period, BCFS HHS EMD will review City emergency communication venues and websites for accessibility. This includes the Ready South app, social media materials and emergency alert processes.
- Develop a written gap analysis report that will identify areas for improvement related to inclusion of people with disabilities and other access and functional needs. This may include identifying EOP's and SOP's that have not been developed and are needed to have a comprehensive emergency management program.
- Develop recommended corrective actions report to include corrective action implementation steps.
- Facilitate 10 council district community feedback sessions, with specific focus for individuals with disabilities and other representative stakeholders to gain input regarding city inclusionary planning concerns and perceptions.
- Assist SAOEM to set up a Stakeholder Engagement Task Force for the project that will bring diverse disability stakeholders of the community together to participate in the project. Participation will include three (3) Task Force meetings that BCFS HHS EMD will facilitate with SAOEM. The goal of the Task Force will be to give stakeholders with relevant disability concerns and interests and opportunity to learn what gaps are being identified and provide their input to those gaps, and to provide recommendations for improvement and strategies for implementation. This will ensure planning is done "with" individuals with disabilities and not "for" them. This reinforces the concept of "no planning about us without us".
- It is anticipated that as a result of the gap analysis and recommendation report, the City of San Antonio will be revising their existing plans and developing new plans as identified. BCFS HHS EMD will assist SAOEM and the City with these revisions by providing appropriate language/text recommendations related to disability inclusion to the extent possible within the time frame of the project contract. We understand that some policies and procedures can take time for approval processes and legal review, which may affect the ability to review and make recommendations to revised plans before the contract deadline. The scope of work does not extend to actual writing of revised plans, revisions will be the responsibility of the City. Conduct a presentation on project to DAAC at start of project to gain input on disability inclusion in city disaster planning. A second meeting would follow after gap analysis to gather recommendations to include in recommendation report. The meetings can coincide with the DAAC's monthly meeting dates to reduce additional meeting requirements for the group.
- Conduct an in-person presentation to key City personnel on the findings and recommendations from the gap analysis report and recommendation report.

### 3.1.1 Project Deliverables Timeline

- Initial meeting with SAOEM to finalized project plan by January 7<sup>th</sup>, 2022.
- In-person kick off meeting with City Departments by January 21<sup>st</sup>, 2022.
- Initial presentation to DAAC by January 31<sup>st</sup>, 2022.
- Department interviews, review of selected plans and procedures completed by March 31<sup>st</sup>, 2022. This includes review of city emergency communication venues and websites for accessibility.
- Development of Gap Analysis and meet with SAOEM for review by April 30<sup>th</sup>, 2022.
- Meet with DAAC to review Gap Analysis and gain input to recommendation document by May 13<sup>th</sup>, 2022
- Development of Recommendation Report and finalize any changes to Gap Analysis by May 31<sup>st</sup>, 2022.
- Inclusionary language input to documents and assistance with development of any additional documents identified by August 31<sup>st</sup>, 2022.
- Presentations to ELT and close out meeting with SAOEM and delivery of final invoices by September 30<sup>th</sup>, 2022

Schedule for Community Feedback meetings in coordination with SAOEM rep and council districts will be determined at initial meeting with SAOEM. It is estimated that all meetings will be completed by May 15<sup>th</sup>, 2022.

### 3.1.2 Document Review, Gap Analysis of Selected EOPs and Programs, and Recommendation Report

BCFS HHS will review emergency plans and programs with the final goal of identifying gaps in disability inclusionary and Functional Needs Support Services planning. The SAOEM POC will provide electronic copies of the selected emergency plans and supporting documents to BCFS HHS for review. Determination of selected plans and support documents will be discussed with the SAOEM at the kick-off meeting.

Upon completion of the review process, BCFS HHS will provide a comprehensive gap analysis relative to FNSS and inclusion of people with disabilities and other access and functional needs into the emergency management process. BCFS HHS' recommendations and gaps will be developed based on federal, state and local legal requirements and best practices related to integration of people with disabilities and others with access and functional needs. These resources and references include but are not limited to:

- National Response Framework
- FEMA Comprehensive Preparedness Guide 101, Version 2.0
- FEMA Guidance on Planning for Integration of Functional Needs Support Services in General Populations Shelters
- ADA Best Practice Toolkit for State and Local Governments
- Applicable federal, state, and local law
- BCFS' best practices and lessons learned from review and development of revised EOPs for the State of Texas, the City of Los Angeles, the City of Phoenix, San Diego UASI Region, New York City, Westchester County and the District of Columbia.

Based on the results of the gap analysis, BCFS HHS EMD will then develop a recommendation report for SAOEM. The focus of the report will be recommendations to enhance the development of comprehensive emergency plans and programs that are inclusionary and integrated to include planning for people with disabilities and other access and functional needs. This can include, but not be limited to identifying solutions for the following goals as they relate to disability integrated planning:

- Assessment of the efficacy of current emergency plans; and

- Advance identification of needs and resources; and
- Provision of public notification and communications; and
- Provision of policies or procedures concerning mass care and sheltering; and
- Provision of assistance with evacuation and transportation; and
- Provision of temporary housing; and
- Provision of assistance in recovery and remediation efforts after an emergency or disaster

### 3.1.3 Project Close Out

After the completion of the gap analysis and recommendation report, BCFS HHS shall provide an in-person presentation to selected City personnel and stakeholders on the findings and recommendations from the gap analysis report and recommendation report.

BCFS HHS will assemble all project documents from the contract period in an electronic document to be submitted to the SAOEM POC at the end of the contract. The electronic record will include, but is not limited to:

- Gap Analysis findings from the review of the selected city and regional plans; and
- Recommendations Report and suggested next steps; and
- Any other documents related to the performance work of the project phases and/or requested by the SAOEM POC.

BCFS HHS will conduct a final meeting with the SAOEM POC at the conclusion of the project, to make any final recommendations on how the City can phase project work into permanent city-wide operations.

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

## **IV. COMPENSATION TO CONSULTANT**

- 4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \$185,264.10 as total compensation, which includes all fixed fees and costs of operation, services, and materials (personnel, materials, computer support, travel mileage) during the term of this Agreement, to be paid to Consultant as follows:

- First Invoice: Upon completion of and approval of gap analysis = \$92,632.05
- Second Invoice: Upon completion of Recommendation Report and project final meeting = \$92,632.05

- 4.2 Consultant shall submit invoices to City upon completion of the deliverables as identified in section 4.1 above and in accordance with the scope of work timeline identified in section 3.1, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices

shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Office of Emergency Management, Attention: Diana Lopez, P.O. Box 839966, San Antonio, Texas 78283-3966.

- 4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing in accordance with Article XVI Amendments.
- 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 Consultant 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 Consultant, for the payment of any monies or the provision of any goods or services.

#### **V. OWNERSHIP OF DOCUMENTS**

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement 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 Consultant.
- 5.2 Consultant 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, without restriction.

#### **VI. RECORDS RETENTION**

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

- 6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant 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 the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon thirty (30) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, *[insert events of default below for which Consultant shall have time to correct]* same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant 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 consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
- 7.4.2 Bankruptcy or selling substantially all of company's assets;
- 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
- 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Consultant 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 Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant 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 Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested by City.

- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

### VIII. NOTICE

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

If intended for City, to:  
 Diana Lopez  
 City of San Antonio  
 Office of Emergency Management  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

If intended for Consultant, to:  
 Denise Grimm  
 BCFS Health and Human Services  
 Emergency Management Division  
 7451 FM 3009  
 Schertz, Texas 78154

### IX. NON-DISCRIMINATION

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

### X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to SAOEM, which shall be clearly labeled "*Disability Consulting Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized

by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by SAOEM. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. h. Explosion, collapse, underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in



	professional services.
UAV Commercial Liability Insurance	\$1,000,000 per claim.

- 10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Consultant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio  
 Attn: San Antonio Office of Emergency Management  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

- 10.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, 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 the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant'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 the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

## XI. INDEMNIFICATION

- 11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, 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 CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Consultant 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 Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding, and this Agreement is made in reliance thereon, that Consultant intends to use no subcontractors in the performance of this Agreement. Any subcontractor shall be approved by City, in accordance with Article XVI Amendments, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.
- 12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City, in accordance with Article XVI Amendments. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, 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 Consultant 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 Consultant 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 Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

## **XIII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Consultant, its officers, agents,

employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

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

14.1 RESERVED

14.2 RESERVED

14.3 RESERVED

14.4 RESERVED

14.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Consultant 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, Consultant 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. Consultant'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. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

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

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

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent

- or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

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

## **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. The City Manager or their designee shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

## **XVII. SEVERABILITY**

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

## **XVIII. LICENSES/CERTIFICATIONS**

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

## **XIX. COMPLIANCE**

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

## **XX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement

shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **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 HEREUNDER 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.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

#### **XXII. LEGAL AUTHORITY**

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

#### **XXIII. PARTIES BOUND**

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

#### **XXIV. CAPTIONS**

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

#### **XXV. INCORPORATION OF EXHIBITS**

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

Exhibit A: Consultant's Proposal

#### **XXVI. ENTIRE AGREEMENT**

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

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

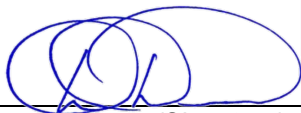
- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
  - (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 27.3 "Company" means a for-profit sole proprietorship, 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.
- 27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

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

**CITY OF SAN ANTONIO**

**CONSULTANT**  
**BCFS Health and Human Services,**  
**Emergency Management Division (BCFS**  
**HHS EMD)**

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

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

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

Printed Name: Dwight Graves  
Title: Business Services Manager  
Date: 11/17/2021

Approved as to Form:

Thomas Filopoulos  
Assistant City Attorney

