

**PROFESSIONAL SERVICES CONTRACT  
WITH  
RIVER CITY PRODUCE CO. INC.**

This contract ("CONTRACT") is between the City of San Antonio, a Texas municipal corporation ("CITY"), acting by and through its Director of the Department of Human Services pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 2024, and River City Produce Co. Inc. ("CONSULTANT"), together, "the Parties."

WHEREAS, City issued a Request for Proposal (RFP) for Produce Market for Senior Services through RFP 24-030 (RFx 6100017573) on December 6, 2023, and Contractor is the chosen respondent; NOW THEREFORE:

The Parties 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. TERM**

- 1.1 This CONTRACT shall commence on May 1, 2024, and shall terminate on September 30, 2026, unless earlier terminated pursuant to any provision hereof.

**II. SCOPE OF SERVICES**

- 2.1 The CONSULTANT agrees to provide all services in accordance with the **Scope of Work (Attachment A)** in a manner reasonably satisfactory to the Director of the Department of Human Services ("Director"). The determination made by Director shall be final, binding and conclusive on all Parties hereto. CITY shall have the right to terminate this CONTRACT, in whole or in part, in accordance with Article XIV, Termination, 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.
- 2.2 CONSULTANT further agrees that where the above referenced RFP, **CONSULTANT'S Proposal (Attachment C)**, and the terms of this CONTRACT conflict, this CONTRACT shall rule. Should CONSULTANT's Proposal offer more or additional services, CITY may approve those additional services.

**III. COMPENSATION TO CONSULTANT**

- 3.1 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 CONTRACT, CITY agrees to pay CONSULTANT a total amount not to exceed **\$417,781.25**, to be paid to CONSULTANT in amounts up to \$600 per Market and \$25 per Market Box. The yearly amount may shift between years over the term of this contract, so long as the total amount of the contract remains the same, unless otherwise following the Amendment provisions of this CONTRACT.
- 3.2 Beginning thirty (30) days after the execution date of the CONTRACT, CONSULTANT may submit invoices to CITY, in a form acceptable to CITY, which CITY shall pay within thirty (30) days of receipt and approval by Director. Invoices shall be submitted, not more than monthly, to: City of San Antonio, Department of Human Services, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976.
- 3.3 The Parties hereby agree that all compensable expenses of CONSULTANT have been provided for in the total payment to CONSULTANT as specified in section 3.1 above. No additional fees or expenses of CONSULTANT shall be charged by CONSULTANT nor be payable by CITY, without prior approval and written agreement of the Parties.
- 3.4 Final payment due under the CONTRACT will not be paid until all the work, reports, data, documents, and any other unfinished services necessary to complete performance under the CONTRACT have been received,

performed and are approved by the CITY. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.

- 3.5 CITY shall not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 3.6 If CITY Council does not allocate enough funds to support the respective yearly amounts of this CONTRACT during its annual budget period, the budget for this CONTRACT may be adjusted to correspond to the actual amount allocated by the CITY Council. Written notice of such adjustments shall be promptly delivered to CONSULTANT. CITY shall remain responsible for payment to CONSULTANT for any and all work performed prior to receipt of such notice.

#### **IV. INDEPENDENT CONTRACTOR**

- 4.1 CONSULTANT understands and agrees that CONSULTANT is and shall be deemed to be an independent contractor, and not an officer, agent, servant or employee of CITY, and that CONSULTANT is responsible for the acts or omissions of its officers, agents, employees, contractors, subcontractors and consultants, and that the CITY shall in no way be responsible therefor. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties hereto. CONSULTANT understands and agrees 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 CONTRACT. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

#### **V. CONFIDENTIALITY**

- 5.1 No reports, information, designs, data, or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives a request to disclose or produce documents, CONSULTANT shall inform the CITY promptly for the purpose of receiving direction regarding the manner of processing.
- 5.2 CONSULTANT shall comply with laws, regulations and rules pertaining to confidentiality and shall establish a method to secure the confidentiality of documents and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.

#### **VI. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

- 6.1 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

Under Texas Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 6.2 CONSULTANT and CITY agree that any results, information, or data associated with work performed pursuant to the Project shall be and remain the sole and exclusive proprietary property of CONSULTANT. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in the CONSULTANT. Subject to confidential treatment by CITY of CONSULTANT Confidential Information that may be disclosed thereunder, CONSULTANT grants CITY a permanent and perpetual, fully paid-up, non-exclusive license under CONSULTANT's copyrights to reproduce, publish, use, and to make derivative works, from any written report prepared and delivered to CITY in accordance with this CONTRACT. The CITY shall own the copyright of whatever nature or extent and in all media whatsoever to any documents and records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. CONSULTANT and its employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY. Provided, however, nothing herein contained is intended nor shall it be construed to require CONSULTANT to transfer any ownership interest in CONSULTANT's best practice and benchmarking information to the CITY. CONSULTANT understands and agrees that CONSULTANT's rights are subject to that of the U.S. Department of Health and Human Services and the federal government and that CONSULTANT must comply with 45 C.F.R. 74.36 with regard to intellectual property developed pursuant to this CONTRACT.

#### VII. RIGHT OF REVIEW AND AUDIT; RECORDS RETENTION

- 7.1 Review & Audit. CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all documents, and shall make such materials available to the CITY, at all reasonable times and as often as CITY may deem necessary during the CONTRACT 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.
- 7.2 Public Information. If CONSULTANT receives inquiries regarding documents within its possession pursuant to this CONTRACT, CONSULTANT shall (a) within twenty-four (24) hours of receiving the requests forward such requests to City for notification purposes and to afford the CITY the opportunity to assert any applicable arguments or protections necessary to protect its information, and (b) take action as authorized under the Public Information Act to protect information that may be confidential pursuant to state or federal law. If the requested information is confidential pursuant to state or Federal law, the CONSULTANT shall submit to CITY the list of specific statutory authority mandating confidentiality no later than two (2) business days of CONSULTANT's receipt of such request.
- 7.3 Retention. 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 CONTRACT. If, at the end of the retention period, there is litigation or dispute arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT shall retain the records until the resolution of such litigation or dispute. CONSULTANT acknowledges and agrees that CITY shall have access to any and all such documents at any and all reasonable 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.

#### VIII. LICENSES AND CERTIFICATIONS

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

## IX. COMPLIANCE

- 9.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations. Failure to comply with applicable laws and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions. In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio and applicable grant rules and regulations, shall have the final authority to render or secure an interpretation.
- 9.2 CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991.
- 9.3 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. Also, CONSULTANT certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
  - b. Section 504 of the Rehabilitation Act of 1973, as amended;
  - c. The Age Discrimination Act of 1975, as amended;
  - d. Title IX of the Education Amendments of 1972, as amended; and
  - e. All applicable regulations implementing the foregoing laws.
- 9.4 Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a value of \$100,000 or more with a company for goods or services, unless the contract contains a written verification from the company that it:
1. does not boycott Israel; and
  2. will not boycott Israel during the term of the contract.

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

*"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 with 10 or more full time employees that exists to make a profit. "Company" does not include a sole proprietorship.*

By submitting an offer to, or executing contract documents with, the City of San Antonio, Contractor, if it meets the definition of "Company," hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Contract. City hereby relies on Contractor's verification. If found to be false, City may terminate this Contract for material breach.

## X. CONFLICT OF INTEREST

- 10.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the City's 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: a City officer or employee; his parent, child or

spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

10.2 CONSULTANT represents, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT are neither a City officer nor an employee as defined by Section 2-52 (e) of the City’s Ethics Code. CONSULTANT further represents that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

**XI. INSURANCE**

CONSULTANT agrees to comply with the following:

- 11.1 No later than 30 days before the scheduled work under this CONTRACT, CONSULTANT must provide a completed Certificate(s) of Insurance to CITY’s Department of Human Services. 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.
- 11.2 Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by CITY’S Risk Manager. No officer or employee, other than CITY’S Risk Manager, shall have authority to waive this requirement.
- 11.3 If the City does not receive copies of insurance endorsement, then by executing this CONTRACT, CONSULTANT certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the work done under this CONTRACT.
- 11.4 The City’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event(s) or during the effective period of this CONTRACT based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 11.5 LICENSEE/CONSULTANT/VENDOR shall obtain and maintain in full force and effect for the duration of this CONTRACT, at CONSULTANT’S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the LICENSEE claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers’ Compensation 2. Employers’ Liability	Statutory \$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal / Advertising Injury d. Sexual Abuse / Molestation** e. Independent Contractors*	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
*4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$250,000 per occurrence

5. Professional Liability	\$500,000 per claim
<b>** Required for projects involving services to children</b> <b>* If Required; BAL always required if CONSULTANT is on City property</b>	

- 11.6 LICENSEE/CONSULTANT/VENDOR must require, by written contract, that all subcontractors providing goods or services under this CONTRACT obtain the same insurance coverages required of CONSULTANT and provide a certificate of insurance and endorsement that names CONSULTANT and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements the subcontractor starts work.
- 11.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. CONSULTANT must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:
- City of San Antonio  
Attn: Department of Human Services  
P.O. Box 839966  
San Antonio, Texas 78283-3966
- 11.8 CONSULTANT'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.
  - Consultant shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
  - Provide thirty (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.
- 11.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, 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 CONTRACT. Failure to provide and to maintain the required insurance shall constitute a material breach of this CONTRACT.
- 11.10 In addition to any other remedies CITY may have upon CONSULTANT'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONSULTANT to stop work and/or withhold any payment(s) which become due to LICENSEE under this CONTRACT until CONSULTANT demonstrates compliance with requirements.
- 11.11 Nothing contained in this CONTRACT shall be construed as limiting 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 CONTRACT.
- 11.12 CONSULTANT'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 CONTRACT.

- 11.13 The insurance required is in addition to and separate from any other obligation contained in this CONTRACT and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 11.14 CONSULTANT and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

## XII. INDEMNITY

### 12.1 CONSULTANT AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

**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 CONTRACT, 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 CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IF CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.**

The provisions of this INDEMNIFICATION 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.

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 CONTRACT 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.

## XIII. RESERVED

## XIV. TERMINATION

- 14.1 For purposes of this CONTRACT, "termination" shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 14.2 **TERMINATION BY NOTICE:** The CONTRACT may be terminated by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) days after receipt of the notice by the other party.
- 14.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the non-defaulting party shall deliver to the defaulting party written notice thereof specifying the matters of default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate as of the end of such ten (10) day period.

- 14.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, and the CONTRACT may not be continued by severance of the prohibited duties, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 14.5 **NON-APPROPRIATION:** In the event that through action or no action initiated by the City of San Antonio, the CITY's legislative body does not appropriate funds for the continuation of this CONTRACT and has no funds to do so from other sources, this CONTRACT may be terminated. To effect this termination, the CITY shall, thirty (30) days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.
- 14.6 **EFFECT OF TERMINATION:** Upon the effective date of expiration or termination of this CONTRACT CONSULTANT shall cease all operations of work being performed by CONSULTANT or any of its approved subcontractors pursuant to this CONTRACT, except as provided herein after. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and documents and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate, if so requested by CITY; otherwise, the documents shall be retained by CONSULTANT in accordance with Article VII, Right of Review and Audit; Records Retention. Any records or documents transfer shall be completed within fifteen (15) days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT's sole cost and expense.
- 14.7 Within sixty (60) days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its final claim, in detail and marked "Final Invoice," for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination. The CITY shall pay CONSULTANT in accordance with the provisions of Article III of this CONTRACT. Failure by CONSULTANT to submit its claims within said sixty (60) 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 funds that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this CONTRACT.
- 14.8 Upon termination of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT's books, accounts, and records. Within thirty (30) days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY.
- 14.9 Termination not sole remedy. In no event shall CITY's action of terminating this CONTRACT, 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.

## XV. AMENDMENT

- 15.1 Except where the terms of this CONTRACT expressly provide otherwise, any amendment shall not be binding on the Parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the execution date hereof, so long as the cumulative total amount of all amendments for this CONTRACT do not exceed \$25,000.00.
- 15.2 It is understood and agreed by the Parties, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

**VI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PLAN**

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 (Attachment B)** 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 the 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.

**XVII. NOTICE**

17.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient, if in writing, and to have been duly given if and when delivered personally, with receipt acknowledged, or upon receipt if sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

**CITY**

Department of Human Services  
Attn: Director  
100 W. Houston Street, 9<sup>th</sup> Floor  
San Antonio, Texas 78205  
yolanda.perez@sanantonio.gov

**CONSULTANT**

River City Produce Co. Inc.  
Attn: Jamie Gonzalez, Community Engagement  
Manager  
1616 S. Laredo St.  
San Antonio, Texas 78207  
jamie.gonzalez@rivercityproduce.com

**XVIII. LEGAL AUTHORITY**

18.1 CONSULTANT represents and certifies that the person signing on behalf of CONSULTANT is fully authorized to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

**XIX. SUBCONTRACTING AND ASSIGNING INTEREST**

19.1 None of the work covered by this CONTRACT shall be sub-contracted without the prior written consent of the CITY and, if necessary, appropriate amendment to this CONTRACT consistent with the requirements herein. The violation of this provision by CONSULTANT shall not release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.

19.2 CONSULTANT shall not assign or transfer CONSULTANT’s interest in this CONTRACT or any portion hereof without the written consent of CITY and, if applicable, the Grantor. Any attempt to transfer, pledge or otherwise assign shall be void *ab initio* and shall confer no rights upon any third person or party.

**XX. SUCCESSORS AND ASSIGNS**

20.1 This CONTRACT shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

**XXI. NON-WAIVER**

21.1 Unless otherwise specifically provided for in this CONTRACT, a waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this CONTRACT 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. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this CONTRACT shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Parties. 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.

**XXII. VENUE AND GOVERNING LAW**

**22.1 ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**

**XXIII. SEVERABILITY**

23.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future laws during the term of this CONTRACT, including any extension, it is the intention of the Parties hereto that the remainder of the CONTRACT shall not be affected thereby, and that in lieu of each clause or provision of the CONTRACT that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the CONTRACT.

**XVII. ENTIRE AGREEMENT**

24.1 Each of the Attachments listed below is an essential part of the CONTRACT, which governs the rights and duties of the Parties. This CONTRACT, together with its authorizing ordinance, exhibits and attachments, if any, embodies the final and entire agreement of the Parties hereto, and contains all of the terms and conditions agreed upon, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the subject matter of this CONTRACT shall be deemed to exist or to bind the Parties unless same be executed in accordance with Article XV.

EXECUTED as of the date of the last party to sign below.

CITY  
Department of Human Services

CONSULTANT  
River City Produce Co. Inc.

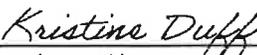
\_\_\_\_\_  
Melody Woosley, Director

  
\_\_\_\_\_  
Philip Gonzalez, National Sales Director

Date: \_\_\_\_\_

Date: MARCH 6, 2024

APPROVED AS TO FORM:

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

- Attachment A – Statement of Work
- Attachment B – SBEDA provisions
- Attachment C – CONSULTANT’s Proposal

## **Attachment A**

### **Statement of Work**

Consultant will provide, at City-coordinated locations, dates and times, the following to supplement City's nutrition education presentations: produce markets onsite at 13 comprehensive and 6 part-time senior centers throughout the City, including the provision of produce boxes at each market and collaboration with City to develop the food demo that will accompany the nutrition education portion provided by the City's Registered Dietitians. The City will provide marketing and nutrition education.

Consultant shall provide:

- a. Produce Market – pop up produce markets will be set up at predetermined sites. Markets will offer a variety of fruits and vegetables in season at an affordable price. Markets will have consultant staff available to help with purchasing items. Respondent will provide tables and tents and any other equipment needed for produce market set-up. Consultant will schedule 60 produce markets during the year.
- b. Produce Box – Portable boxes members can take home after event. Boxes will include seasonal fresh produce that is no more than 12 lbs. to 15 lbs. Each site will vary on the quantities of produce boxes needed. Consultant will work with the City to plan first 6 months of year to determine quantity needed and the price point that the order will fall under per price schedule.
- c. Food Demo – Respondent will work with the City's registered dietitians to collaborate on a food demo that compliments the nutrition education presentation. Consultant will provide food items and equipment necessary for the demonstration at the at given produce market.

## Attachment B

### SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM Produce Markets for Senior Services

#### A. 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.

#### B. 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. 5. (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. 6. (d), 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.

#### C. 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.**

#### D. 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>

E. 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
5. Disqualification of CONSULTANT 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).

#### F. 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.

#### G. 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.

#### H. Definitions

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

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

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are distinguished from contract payments, the first, only reflect the anticipated dollar amounts the second, reflect actual dollar amounts that are paid to a contractor under an awarded contract).

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

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which 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 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:

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

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

**M/WBE Evaluation Preference** – an API that 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.

**Attachment C**  
**CONSULTANT's Proposal**

## ATTACHMENT III

### CONSULTANT'S PROPOSED PLAN

#### RIVER CITY PRODUCE CO, INC RFQ ATTACHMENT A, PART THREE PROPOSED PLAN

Prepare and submit the following items:

1. **Operating Plan** - Describe the proposed plan to conduct operations including providing produce markets, food demonstrations and preparation of produce boxes for sites, staff assigned, and schedule of events.
  2. **Delivery Plan** - Describe Respondent's delivery plan on providing produce markets at the city sites as well as delivery of produce boxes. Include a plan that details the preparation, package and delivery of produce boxes to the sites to include but not limited to delivery schedule, transportation, equipment needed to transport produce/boxes from the respondent's location to the sites. Respondents plan shall provide for all labor, materials, supplies and equipment necessary to perform scope of services and maintain and meet temperature requirements. Include description of vehicles used for delivery including the frequency of maintenance checks on vehicles and processes in place to ensure vehicles are working optimally as well as additional procedures for when a vehicle is not working or breakdowns. ANSWER TO 1 AND 2 HAVE BEEN COMBINED.
- **Infrastructure:** River City Produce has a 40,000 square foot warehouse in the heart of San Antonio. Our facility features multi-temperature refrigeration, temperature-controlled packing areas, and an enclosed shipping/receiving dock. Our warehouse includes forklifts, manual and electric pallet jacks, scales, and a fleet of over 60 refrigerated trucks and vans. The condition and quality of the heavy equipment is ample to support a project of this size. Big State Produce holds a PACA license through the USDA and a third-party food safety certification through Primus Labs.
    - Vehicles are maintained according to RCP's safety and maintenance program and include regular visual inspections, monthly audits, and routine maintenance. There is a vehicle in place to support the market program exclusively. Any breakdown can be covered by the rest of the available fleet.
  - **The Produce Market** setup includes a designated van, tables, tents, dollies, pos system, shopping tablets, and merchandising equipment. The number of support staff will be determined based on site census estimates. Staff will include a minimum of 4 people. Produce includes an average of 50+ varieties of whole and fresh chopped fruits and vegetables. Produce is sourced from a variety of local and national growers using traditional and organic farming methods.
    - **Market Preparation: Refrigerated warehouse – 2.5 staff members 3-6 hours per market and box building session – Select and count produce, build market pallet, select, and count produce for boxes, pack boxes. Move large volume produce and repack for small retail scale distribution – bagging and bundling.**
    - **Demonstration: Length 1 hour plus 30-minute onsite setup/preparation + 1-2 hours offsite preparation for 1-2 staff members. 2 staff members. Setup includes a 5oz sample of 1 or more tasting recipes. Delivery will be educational, informative, and fun. Planning will include script collaboration, items of the month, and practical conversations about storage, selection, and flavor.**
    - **Produce Market – 2-3 staff for set up – 45 min-1hour. Execution - 3-5 staff/volunteers to work as personal shoppers and stockers. 2-3 staff – tear down – 20-30 minutes.**
  - **Staff:** The Produce Market team consists of 4 full-time employees. Staffing includes 2 warehouse/market staff, a team leader, market manager/clerk, a Director/Chef – Demo Coordinator, and additional accounting and logistics office staff. This team dedicates over 100 hours a week to building and executing produce markets and boxes. These functions include inventory and box curation, selecting, sorting, and quality control of all produce. Other warehouse staff are used for receiving and storing produce. Volunteers are utilized at produce markets and are compensated with produce and produce boxes.

**4. Quality Assurance Plan - Describe Respondents Quality Assurance Plan for:**

- (1) ensuring that quality produce is available at produce markets.
- (2) keeping produce in produce boxes fresh and free of damage during packaging and transport.

Please outline procedures that you currently have in place for quality assurance as well as additional procedures that you may propose specific to this contract.

All produce used in the produce markets and in boxes is sourced and selected by our primary buyer. Seasonality, quality, and cost are all highly considered when establishing availability and pricing. If produce does not meet preset standards in all areas, then it is not included in any formulations for the market/box week. When Produce is received at our facility our purchase order is matched to the bill of lading. Food safety and quality inspection is done visually for the truck and quality of the product and by count. If the commodities fail inspection, then they are rejected or negotiated for receiving at a reduced quantity or price. This is done through agreement with the shipper/broker and may include a USDA inspection. Commodities meeting receiving criteria are placed in refrigeration and used for distribution. In the moment decisions are later made to address any sudden changes in quality or availability and to source quality substitutes.

**6. Security - Describe process for background checks and explain criminal background checks for employees to ensure they meet all federal and state requirements.**

River City Produce's hiring practices include all federal and state requirements for a legal hire in the state of Texas. All drivers complete a licensing review. Produce Box/Market staff have their backgrounds reviewed for violent or sexual offenses.

**8. Timeline to implement services - Describe the timeline of events required to begin this project at the start of program effective May 1,2024**

Upon completion of the selection process our team will work directly with COSA-DHS to establish the calendar of the market. We can book as far out as a year if needed. We will also work with DHS staff to establish an "ingredient of the month" for the first 3-6 months of the market calendar.

Markets for May will need to be "booked" no later than mid-April.

**9. Backup Plan - Describe how Respondent will meet its contractual obligations if the Respondent's facility cannot administer produce market or produce boxes due to a natural or man-made disaster.**

In the instance that a market or boxes would need to be canceled due to disaster or illness, the team will notify COSA DHS will expediency. The market will be rescheduled at the earliest next date. Adding a demonstration partner allows us to have multiple teams available and limiting cancelations due to illness. Natural disasters will follow the cadence of local government recommendations and with consideration of the safety of staff and passage.

**10. Additional Information - Provide any additional plans and/or relevant information about Respondent's approach to providing the required services.**

**Proposed pricing, produce box counts and expansion.**

The price schedule RFP Attachment B is all inclusive. These services include Produce Demonstration, tasting, supplies, recipes development, produce boxes, produce markets, staffing, account maintenance, ongoing education with staff & DHS team, administration, and reporting.

Based on our experience we made the following recommendations for scaling, consistency, and equity.

- The RFP asks for 1,030 produce boxes per year and the pricing for this number is reflected across all three years.
  - 60 markets in the year would leave only 17 boxes per market.

- Our experience with the current programming indicates an average of 65+ class attendees and 80+ shoppers per market event.
  - **We recommend a distribution of 40-100 boxes per market with COSA-DHS staff to dictate the number cadence based on location and expectations of class size.**
- Annual cost will vary based on prevailing market conditions. The price schedule is adjusted annually for market fluctuations, inflation, and expansion capacity.

### **Community, community investment, community engagement**

Our proposal is a narrative that demonstrates a deep commitment to our community. Our innovative concepts that connect, educate, and build dignity in our relationship with food and we have a good time doing it. The Markets by RCP, our community bags, and produce boxes illustrate our mission to create accessibility and a community of better educated consumers. Our community involvement is seen in our partnerships with organizations like the American Heart Association, Bexar County, and reflected in our many partnerships and through our advocacy work with The Food Policy Council and the Mayor's Fitness Council. A few of the ways we demonstrate our commitment to community reinvestment are through our food is health box program and in our development of a variety of voucher - subsidy opportunities. These programs create sustainable public private partnerships that help to increase access to quality produce and support the long-term goal of change in habit. The intention of our programming in impacting the nutrition equity and the social determinants of health through efforts that create opportunities to build community and increase consistent access to quality affordable food. The Senior Market program partnership with COSA-DHS is an excellent example of this type of work and partnership in action. We are excited for the opportunity to continue to grow these concepts together.