

STATE OF TEXAS

§

PROFESSIONAL SERVICES

§

AGREEMENT FOR

§

HIGH SCHOOL EQUIVALENCY

COUNTY OF BEXAR

§

TRAINING

This Agreement is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation acting by and through its City Manager or his designee, pursuant to Ordinance No. 2022-_____ passed and approved on the ____ day of _____, 2022 and Restore Education ("Contractor"), a non-profit entity registered in the State of Texas acting by and through its principal, both of which may be referred to as the "Party" or collectively as the "Parties."

RECITALS

WHEREAS, on November 3, 2020, City of San Antonio voters approved the SA: Ready to Work ballot initiative, authorizing a 1/8th cent sales and use tax for a period of four years to provide workforce development training and higher education to unemployed, underemployed, or underserved residents to obtain high-demand, well-paid careers, in accordance with Chapter 379A of the Texas Local Government Code ("the Better Jobs Act" or "Act"); and

WHEREAS, the SA: Ready to Work program (the "Program") includes the following objectives: increase access to industry-recognized certification training and college; provide wraparound services and emergency funding to ensure successful completion of training and career placement; increase collaboration within the workforce ecosystem; and promote accountability and adaptability throughout the process; and

WHEREAS, City wishes to partner with Contractor to provide services necessary to implement the Program, namely high school equivalency training and support services; and

WHEREAS, the purpose of this Agreement is to establish the terms and conditions under which Contractor and its subcontractors, if any, will provide the aforementioned services.

NOW THEREFORE; the Parties agree, and by the execution of this Agreement are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks described in this Agreement.

I. DEFINITIONS

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

1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 "Contractor" is defined in the preamble of this Agreement and includes its successors.

1.3 "Director" shall mean the executive director of City's Workforce Development Office or his/her designee.

1.4 Contract Monitoring Report

- 1.4.1 Contractor shall submit a Contract Monitoring Report monthly detailing the outcomes achieved against projected performance measures in alignment with the Scorecard.
- 1.4.2 If Contractor has other agreements with the City of San Antonio in which services and outcomes may overlap, Contractor cannot double count participants served under both Agreements unless agreed upon by the City Manager or designee.

II. TERM

2.1. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement will be for a one (1) year period beginning June 1, 2022.

2.2 This agreement is being funded through City's General Fund. 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 subsequent contract period is subject to and contingent upon such appropriation.

2.3 City shall have the right to extend this contract under the same terms and conditions beyond the original term or any renewal thereof, on a month-to-month basis, not to exceed three months. Said month to month extensions shall be in writing, signed by Director, and shall not require City Council approval, subject to and contingent upon appropriation of funding, therefore.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the services described in this Article III, entitled "Scope of Services" in exchange for the compensation described in Article IV, entitled "Compensation." The services to be provided by the Contractor and its subcontractors, if any, shall be performed in a professional manner in accordance and consistent with the scopes of work, methodologies, work plans, and costs described by City and proposed by the Contractor in the following documents:

- A. Exhibit A – Scope of Work
- B. Exhibit B – Scorecard
- C. Exhibit C – Participant Service Schedule
- D. Exhibit D – SBEDA requirements

3.2 City shall have authority to inspect the Contractor's contribution to the Program throughout the Agreement term to ensure compliance with this Agreement and ensure proper usage of City Funds as prescribed by the Scope of Services. All work performed by the Contractor and its subcontractors, if any, hereunder shall be performed to the satisfaction of the Director. The determination made by the Director shall be final, binding, and conclusive on all Parties. City shall be under no obligation to pay for any work performed by the Contractor and its subcontractors, if any, which is not satisfactory to the Director. The City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should the Contractor's work or work of its subcontractors, if any, not be satisfactory to the Director; however, the City shall have no

obligation to terminate and may withhold payment for any unsatisfactory work, should the City elect not to terminate.

3.3 In performing the services required hereunder, Contractor shall:

- 3.3.1 Process, store, and transmit all sensitive data (particularly Sensitive PII as defined in Section 521 of the Texas Business And Commerce Code) captured in the performance of this Agreement in a secure manner and with appropriate technical and procedural controls. All file transmission shall be protected using a mutually-agreed-upon transmission method, which must be proposed to and approved by City within 15 days of execution of this Agreement. At any time, the City may request that Contractor provide evidence of its technical and procedural controls in a timely fashion, including but not limited to security awareness training programs, encryption protocols, and cybersecurity policies and procedures.
- 3.3.2 Ensure that any organizations or agencies that Contractor works with to perform the services required hereunder also adhere to and implement the technical requirements set out in this Section 3.3.
- 3.3.3 Extend its full cooperation in sharing data and materials produced under this Agreement with SA: Ready to Work Program partners as needed for the success of the Program.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of the Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Agreement, the City agrees to pay the Contractor an amount up to NINE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$900,000.00) as follows:

- a. Contractor may submit invoices monthly in alignment with service to participants and in accordance with the reimbursement rates outlined in the Participant Service Schedule attached hereto as **Exhibit C**, which may be updated from time to time as agreed between the Parties, and in accordance with Section 4.3 below. Actual monthly invoice amounts will be based on actual number of clients reaching varying milestones monthly
- b. City shall have the right to increase or to decrease scope and related payments on an annual basis, based on Agency capacity and Agency performance.

4.2 No additional fees or expenses of the Contractor shall be charged by the Contractor nor be payable by the City. The Parties agree that all compensable expenses of the Contractor have been provided for in the total payment to the Contractor as specified in section 4.1 above. Total payments to the Contractor for the original contract term cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.3 In order to receive monthly payment, the Contractor shall submit its Contract Monitoring Report and backup supporting milestones reached for each client by the 15th of each month with data for the previous month as described in section 1.4 above along with its invoice. The City shall review the Contractor's Contract Monitoring Report with deliverables submitted in accordance with this Agreement, and, after approval and

acceptance pursuant to Section 4.4 below, of such reports, the City shall pay invoice within 30 days of receipt and approval by WDO staff, provided however, that in no event shall cumulative payments exceed the amount stated in Section 4.1 above. Original invoices shall be submitted electronically directly to the Accounts Payable section of the Finance Department to the following e-mail address:

accounts.payable@sanantonio.gov.

The Contractor shall submit a copy of the invoice to the City of San Antonio, Workforce Development Department liaison. Please include the WDO liaison, at workforce@sanantonio.gov in the correspondence to ensure the invoice is processed. Invoice should be itemized to reflect number of individuals being billed for specific milestones at the rates assigned in the Exhibit C.

4.4 The City shall not be obligated or liable under this Agreement to any party, other than the Contractor, for the payment of any monies or the provision of any goods or services.

4.5 For any sum of funds paid by City later determined to have not been spent in accordance with the terms of the Agreement, City reserves the right to request return of said funds to City, which shall be returned within ten (10) working days, or shall be proportionately held from future disbursement, as decided by City.

4.6 Costs claimed under this Contract may not be claimed under another City of San Antonio agreement, or contract or grant from another agency, organization, business entity or governmental entity.

4.7 Contractor shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the Director.

V. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

Intellectual Property.

Contractor agrees to abide by the following regarding intellectual property rights:

5.1 Contractor shall pay all royalties and licensing fees. **Contractor shall hold the City harmless and indemnify the City** from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if the Contractor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

5.2 Upon receipt of notification that a third-party claim that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, the Contractor will immediately either:

- 5.2.1 obtain, at the Contractor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- 5.2.2 alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

- 5.2.3 reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

Contractor further agrees to:

- 5.2.4 assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- 5.2.5 assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- 5.2.6 **indemnify the City** against any monetary damages and/or costs awarded in such suit;

Provided that:

- 5.2.7 Contractor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that the Contractor agrees to consult with the Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
- 5.2.8 the Software or the equipment is used by the City in the form, state, or condition as delivered by the Contractor or as modified without the permission of the Contractor, so long as such modification is not the source of the infringement claim,
- 5.2.9 the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provides the Contractor with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that the Contractor assumes responsibility under this section.

Ownership and Licenses.

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

5.4 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 officials or employees pursuant to law including an ordinance, or in the transaction of official business.

5.5 Contractor and its subcontractors, if any, acknowledge and agree that all records, as described herein, collected, or produced in the course of the work required by this contract, are government records and will belong to and be the property of the City. Contractor and its subcontractors, if any, shall be required to turn over to the

City all such records as required pursuant to this contract. Contractor and its subcontractors, if any, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without the City's written permission, unless required to do so by a Court of competent jurisdiction.

5.6 Contractor and its subcontractors, if any, understand and acknowledge that as to the writings, documents, reports or information produced by Contractor and its subcontractors, if any, pursuant to this agreement, City has the right to use all such writings, documents, reports, and information as City desires, without restriction. City's rights in the materials include the right to change, edit, rearrange, subtract from, add to, and combine with any other material, in whole or in part as City and its successors and assigns determine in their sole discretion. City has no obligation to use the data, or to create, produce, distribute, exploit, advertise, or promote, or include, or to exercise any rights given by this Agreement. Contractor and its subcontractors, if any, have no right to review or approve edited materials before they are used by City or at any other time.

5.7 In accordance herewith, the Contractor and its subcontractors, if any, agree to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as the City may deem necessary during the Agreement period, including any extension or renewal, and the record retention period established, for purposes of audit, inspection, examination, and making excerpts or copies of same by the City and any of its authorized representatives.

6.2 Contractor and its subcontractors, if any, shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years ("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, the Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor and its subcontractors, if any, acknowledge and agree that the City shall have access to any and all such documents at any and all times, as deemed necessary by the City, during said retention period. City may, at its election, require the Contractor and its subcontractors, if any, to return said documents to the City prior to or at the conclusion of said retention at the Contractor's expense.

6.3 Contractor and its subcontractors, if any, shall notify the City, immediately, in the event the Contractor or its subcontractors, if any, receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Contractor and its subcontractors, if any, understand and agree that the City will process and handle all such requests.

6.4 Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, the Contractor and its subcontractors, if any, acknowledge that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor apply to this contract. Contractor agrees that the contract can be terminated if the Contractor or its subcontractors, if any, knowingly or intentionally fails to comply with a requirement of that subchapter.

6.5 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. City hereby relies on the Contractor's certification, and if found to be false, the City may terminate the Contract for material breach.

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 of this Agreement.

7.2 Termination Without Cause. This Agreement may be terminated by the City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, the City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
- 7.3.2 Violation by the Contractor and its subcontractors, if any, of any law, rule, or regulation to which the Contractor is bound or shall be bound under the terms of this Agreement; or
- 7.3.3 Bankruptcy or selling substantially all of the Contractor's assets.

7.4 Defaults With Opportunity for Cure. Should the Contractor default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If the Contractor fails to cure the default within such fifteen-day cure period, the City shall have the right, without further notice, to terminate this Agreement in whole or in part as the City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Contractor against the Contractor's future or unpaid invoice(s), subject to the duty on the part of the City to mitigate its losses to the extent required by law.

- 7.4.1 Failing to perform or failing to comply with any covenant or provision required under this Agreement; or
- 7.4.2 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 required under this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, the Contractor shall return all unearned payments to the City within 30 calendar days of such termination. Payments shall be deemed unearned if they are for work not accepted by the City under Sections 3.2 and 4.4.

7.7 Regardless of how this Agreement is terminated, the Contractor shall affect an orderly transfer to the City or to such person(s) or firm(s) as the City may designate, at no additional cost to the 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 the Contractor, or provided to the Contractor, hereunder, regardless of storage medium, if so requested by the City, or shall otherwise be retained by the Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by the City and shall be completed at the Contractor's sole cost and expense. Payment of compensation due or to become due to the Contractor is conditioned upon delivery of all such documents, if requested.

7.8 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, the Contractor shall submit to the City its claims, in detail, for the monies owed by the City for services performed under this Agreement through the effective date of termination. Failure by the Contractor to submit its claims within said 45 calendar days shall negate any liability on the part of the City and constitute a **Waiver** by the Contractor of any and all right or claims to collect moneys that the Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.9 Upon the effective date of expiration or termination of this Agreement, the Contractor shall cease all operations of work being performed by the Contractor or any of its subcontractors pursuant to this Agreement.

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

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
Attn: Michael Ramsey
Workforce Development Office
100 W. Houston Street, 18th Floor
San Antonio, Texas 78205
Email: Michael.ramsey@sanantonio.gov

If intended for Contractor, to:

Restore Education
Attn: Kelli Rhodes
4205 San Pedro Ave
San Antonio, Texas 78212
Email: kelli@restoreeducation.org

IX. NONDISCRIMINATION

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

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, the Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Workforce Development Office, which shall be clearly labeled "*SA: Ready to Work- Interlocal Agreement for High School Equivalency*" 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 the City's Workforce Development Office. 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 the City allow modification whereby the City may incur increased risk.

10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Contractor'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:

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

5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
*6. Cyber Liability	\$1,000,000 per claim
\$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.	

10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of the Contractor herein and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of the Contractor. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the Contractor and 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 the 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 the 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). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

If intended for City, to:

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

10.6 Contractor 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 the 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, the Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend the Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.8 In addition to any other remedies the City may have upon the Contractor'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 the Contractor to stop work hereunder, and/or withhold any payment(s) which become due to the Contractor hereunder until the Contractor demonstrates compliance with the requirements hereof.

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which the Contractor may be held responsible for payments of damages to persons or property resulting from the Contractor's or its subcontractor's performance of the work covered under this Agreement.

10.10 It is agreed that the Contractor'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 Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

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

11.3 CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the CONTRACTOR known to the CONTRACTOR related to or arising out of the CONTRACTOR'S activities under this AGREEMENT.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by the Contractor in fulfilling its obligation hereunder to defend and indemnify the City, unless such right is expressly waived by the City in writing. Contractor shall retain the City approved defense counsel within seven (7) business days of the City's written notice that the City is invoking its right to indemnification under this Agreement. If the Contractor fails to retain Counsel within such time period, the City shall have the right to retain defense counsel on its own behalf, and the Contractor shall be liable for all costs incurred by the City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of the Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 Any work or services subcontracted hereunder shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Prior to the execution of an agreement with a subcontractor to perform specified services under this Agreement, CONTRACTOR shall submit the request, to include the name of the subcontractor, services to be provided, and number of residents serviced, to the City's Workforce Development Office Executive Director (or designee) for approval.

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 the Contractor. City shall in no event be obligated to any third party, including any subcontractor of the Contractor, for performance of services or payment of fees.

12.4 Except as otherwise stated, the Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of the Director. As a condition of such consent, if such consent is granted, the Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should the Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, the City may, at its option, cancel this Agreement and all rights, titles and interest of the Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to the City under this Agreement. The violation of this provision by the Contractor shall in no event release the Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release the Contractor from the payment of any damages to the City, which the City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of the City; that the Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Contractors; that the doctrine of respondeat superior shall not apply as between the City and Contractor, its officers, agents, employees, contractors, subcontractors and Contractors, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between the City and Contractor. The Parties understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

14.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement, and attached hereto and incorporated herein as Exhibit D, 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.

XV. CONFLICT OF INTEREST

15.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the 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 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;

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

15.2 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of the City.

15.3 Contractor acknowledges that the City's reliance on the above warranties and certifications is reasonable.

XVI. AMENDMENTS

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both the City and Contractor and subject to City Council approval, as evidenced by passage of an ordinance, as to City's approval, and under authority granted by formal action under Contractor's governing body, as to Contractor's approval. City Manager, or his/her designee shall have the authority to execute amendments of this Agreement without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws, and in the following circumstances:

(A) modifications to the Scope of Services and Scorecard so long as the terms of the amendment are reasonably within the parameters set forth in the original Scope of Work and Scorecard and remain for the purposes approved by voter-approved sales tax initiative for workforce training and tuition reimbursement;

(B) budget shifts of funds, so long as the total dollar amount set forth in Section 4.1 of this Agreement remains unchanged; or

(C) reductions to the Agreement amount, and any corresponding reductions to Article III Scope of Services and Article IV Compensation to Contractor.

16.22 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVI. SEVERABILITY

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

unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

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

XIX. STATE PROHIBITIONS ON CERTAIN CONTRACTS

19.1 This Article only applies to a contract that:

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

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

19.3 Prohibition on Contracts with Companies Boycotting Israel.

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

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

Contractor hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

19.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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

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

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

19.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries.

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

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

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

XX. NONWAIVER OF PERFORMANCE

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

XXI. LAW APPLICABLE

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

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

25.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be interpreted in the order of priority as appears below:

1. Exhibit A – Scope of Work
2. Exhibit B – Scorecard
3. Exhibit C – Participant Service Schedule
4. Exhibit D – SBEDA Requirements

XXVI. ENTIRE AGREEMENT

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

-----*Signatures to follow*-----

EXECUTED and **AGREED** to by the Parties to be effective upon the date of signature of the last Party to sign.

CITY OF SAN ANTONIO

Erik Walsh
City Manager

Date

RESTORE EDUCATION

Kelli Rhodes
President & CEO

Date

ATTEST AND SEAL:

City Clerk

Date: _____

Approved as to Form:

Christina A. Ramirez
Assistant City Attorney



CITY OF SAN ANTONIO
WORKFORCE DEVELOPMENT OFFICE

SCOPE OF WORK

Restore Education
High School Equivalency (HSE) Attainment

PROGRAM OBJECTIVE:

The objective of the contracted services is to provide academic instruction and intensive staff support to ensure attainment of a high school equivalency (GED) credential, which puts participants on a pathway to more stackable credentials that can connect them to a stable career and self-sufficiency.

SERVICE PLAN:

Funding would specifically allow for flexible instruction to include year-round enrollment, extended hours, and highly individualized services at no cost to the participant. Success in this plan is a result of a personalized participant approach interwoven with comprehensible wraparound social service support. Restore's model interacts with partners through referrals to remove barriers to progress. The community partner connections help to support students' needs as they move along the continuum from obtaining an HSE to preparing for attainment of post-secondary credentials and securing stable employment.

Restore will offer two GED intensive courses. GED NOW is an 8-week course with a 5 day-a-week devotion to GED instruction and practice. GED Flex is a 15-week program providing a similar intensity but allows students flexibility to adjust the class schedule.

Restore will conduct participant surveys to assess the quality of the program and will also coordinate with the City on any marketing materials used throughout the contract.

TARGETED POPULATION:

The target population for this contract includes applicants interested in the Ready to Work program and San Antonio residents over the age of 18 wanting to obtain a high school equivalency (GED) credential. This effort has a citywide impact and serves individuals from every single council district.

NUMBER OF PARTICIPANTS/CLIENTS SERVED:

Restore intends to enroll 500 participants within the contract year. Of those enrolled, 325 participants are expected to achieve 40 hours of instruction; 250 will make a measurable skills gain (identified by the CASAs assessment or GED exam); and 185 will pass at least two official GED subject exams. The City use the Contracting Monitoring Report to track performance measures. Contractor anticipates a total of 90 participants will obtain an HSE (GED) within the contract year.

Performance measures tracked are identified within the scorecard, Exhibit C.

RESTORE EDUCATION - HSE PROPOSED SCORECARD

Performance Measure	2022-2023 Cumulative Total Targets	1 st Quarter Jun	2 nd Quarter Sep	3 rd Quarter Dec	4 th Quarter Mar
1. Unique Level 5-6 Baseline Assessment Participants Served/Enrolled	300				
2. Unique Level 4 Baseline Assessment Participants Served/Enrolled	200				
3. Unique Participant who reached 40 hours of instruction	325				
4. Unique Participants who made a measurable skills gain (show marked improvement on the CASAS or GED exam)	250				
5. Unique Participants who passed at least two official GED subject exams	185				
6. Unique Participants that earn their GED (With baseline score of 5-6 on CASAS assessment) *	60				
7. Unique Participants that earn their GED (With baseline score of 4 on CASAS assessment) *	30				
8. Total Participants Surveyed at time of GED credential completion (At least 85% of Participants)	76				
9. Unique Participants of those surveyed that would recommend Program to others upon Program exit. (At least 85% of Participants)	65				

* Complete all 4 subject exams within the first year; Does not include participants who rollover and graduate the following year

Exhibit C: Participant Service and Agency Payment Schedule_HSE														
Agency: Restore Education														
	Cost Per	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Total
High School Equivalency	Per participant after 12hrs attendance (70% of fee)	50	50	50	60	60	55	60	55	40	20			500
	\$ 1,260.00	\$ 63,000.00	\$ 63,000.00	\$ 63,000.00	\$ 75,600.00	\$ 75,600.00	\$ 69,300.00	\$ 75,600.00	\$ 69,300.00	\$ 50,400.00	\$ 25,200.00	\$ -	\$ -	\$ 630,000.00
	Per participant after 40hrs attendance (10% of fee)		15	20	20	25	30	30	30	35	35	40	45	325
	\$ 180.00	\$ -	\$ 2,700.00	\$ 3,600.00	\$ 3,600.00	\$ 4,500.00	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00	\$ 6,300.00	\$ 6,300.00	\$ 7,200.00	\$ 8,100.00	\$ 58,500.00
	Per participant after passing two GED tests (10% of fee)			10	10	15	15	20	20	20	25	25	25	185
	\$ 180.00	\$ -	\$ -	\$ 1,800.00	\$ 1,800.00	\$ 2,700.00	\$ 2,700.00	\$ 3,600.00	\$ 3,600.00	\$ 3,600.00	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00	\$ 33,300.00
	Per participant after full GED credential (10% of fee)					10	10	10	10	10	10	10	20	90
	\$ 180.00	\$ -	\$ -	\$ -	\$ -	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 3,600.00	\$ 16,200.00
Anticipanted Agency Payment		\$ 63,000.00	\$ 65,700.00	\$ 68,400.00	\$ 81,000.00	\$ 84,600.00	\$ 79,200.00	\$ 86,400.00	\$ 80,100.00	\$ 62,100.00	\$ 37,800.00	\$ 13,500.00	\$ 16,200.00	\$ 738,000.00

**SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) PROGRAM
High School Equivalency Services
Exhibit D**

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/>

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **five percent (5%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).

The **Subcontractor/Supplier Utilization Plan** which CONTRACTOR submitted to City with its response for this contract and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation

including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain this M/WBE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain a subcontracting goal for M/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 5% that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio **Professional Services** industry, as reflected in the City's Centralized Vendor Registration system for the month of June 2021, African-American owned firms represent approximately 4.98% of available subcontractors, Hispanic-American firms represent approximately 9.34%, Asian-American firms represent approximately 0.76%, Native American firms represent approximately 0.11%, and Women-owned firms represent approximately 4.44% of available **Professional Services** subcontractors.

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>) **during or after the price proposal response (as determined by the City)**. 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. 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 7of 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 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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 (SAMSAs), 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.