

ORDINANCE 2022-06-23-0497

AUTHORIZING A CONTRACT WITH FORVIS, LLP, TO PROVIDE EXTERNAL INDEPENDENT AUDIT SERVICES TO THE CITY FOR THE FISCAL YEARS ENDING SEPTEMBER 30, 2022, 2023, AND 2024, WITH TWO ONE-YEAR RENEWAL TERMS AT THE CITY'S OPTION, FOR A TOTAL COST NOT TO EXCEED \$5,290,950.00. FUNDING IN THE AMOUNT OF \$303,090.00 IS AVAILABLE IN THE FY 2022 GENERAL FUND BUDGET. FUNDING FOR SUBSEQUENT YEARS IS SUBJECT TO CITY COUNCIL APPROVAL OF THE ANNUAL BUDGET.

* * * * *

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the City's financial records by an independent Certified Public Accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the City to have its records and accounts audited annually and have an annual financial statement prepared based on the audit; and

WHEREAS, the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"), the State of Texas Uniform Grant Management Standards ("UGMS"), and the Texas Grant Management Standards ("TxGMS") contain certain audit and financial reporting requirements; and

WHEREAS, the City issued a Request For Proposal ("RFP") for Independent External Audit Services ("RFP") and received and evaluated three proposals; and

WHEREAS, staff recommends FORVIS, LLP, for award of a contract based on the City's standard RFP evaluation process; and

WHEREAS, approval of this ordinance will a contract beginning upon award and remaining in full force and effect for a three-year period to include the required audits for the fiscal years ending September 30, 2022, 2023, and 2024, with two (2) one (1) year options to extend the Contract for fiscal years 2025 and 2026 for a total cost not to exceed \$5,290,950.00; and

WHEREAS, all expenditures will be in accordance with the applicable fiscal year's budget approved by City Council; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. This *Audit Services Contract* between the City and FORVIS, LLP, pursuant to which FORVIS, LLP, will provide external independent audit services to the City for the fiscal years ending September 30, 2022, 2023 and 2024, with two one-year renewal terms at the City's option, for a total cost not to exceed \$5,290,950.00 is hereby approved. The City Manager or designee, or the Chief Financial Officer or designee, is hereby authorized to execute the *Audit Services Contract* on behalf of the City of San Antonio. A copy of said contract is attached hereto and incorporated herein by reference for all purposes as **Exhibit I**. The City Manager or designee, or the Chief Financial Officer or designee, is hereby authorized to execute *Engagement Letters* that will apply to each audit engagement subject to this Contract with terms and conditions approved by the Chief Financial Officer or designee and the City Attorney or designee, without further approval of the City Council.

SECTION 2. Funding for this ordinance in the amount of \$985,000.00 is available in Fund 11001000, Cost Center 703010001 and General Ledger 5201040 as part of the Fiscal Year 2022 Adopted Budget approved by the City Council.


SECTION 3. Funding for this ordinance in the amount of \$12,000.00 is available in Fund 11001000, various Cost Centers and General Ledger 5406539 as part of the Fiscal Year 2022 Adopted Budget approved by the City Council. Additional funding is contingent upon City Council approval of the Fiscal Year 2023 and subsequent budgets that fall within the term of the contract.

SECTION 4. Payment is authorized to FORVIS, LLP, and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.


SECTION 6. This ordinance is effective immediately upon passage by eight or more affirmative votes; otherwise, it is effective on the tenth day after passage.


PASSED and APPROVED this 23rd day of June, 2022.


M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:


Debbie Racca-Sittre, City Clerk


Andrew Segovia, City Attorney

LC
06/23/22
Item No. 7

Exhibit I



City of San Antonio

City Council A Session Meeting June 23, 2022

7.

2022-06-23-0497

Ordinance authorizing a contract with FORVIS, LLP, to provide external independent audit services to the City for the fiscal years ending September 30, 2022, 2023 and 2024, with two oneyear renewal terms at the City's option, for a total cost not to exceed \$5,290,950.00. Funding in the amount of \$303,090 is available in the FY 2022 General Fund budget. Funding for the subsequent years is subject to City Council approval of the annual budget. [Ben Gorzell Jr., Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer]

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Castillo seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKeeRodriguez, Viagran, Rocha Garcia, Castillo, Cabello
Havrda, Pelaez, Courage, Perry

Absent: Sandoval

AUDIT SERVICES CONTRACT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Contract (the "Contract") is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("CITY") acting by and through its Chief Financial Officer ("CFO") or said CFO's designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____ and **FORVIS, LLP**, a Delaware limited liability partnership, by and through its partner, Amanda E. Eaves, CPA ("FORVIS" or "CONTRACTOR"). CITY and CONTRACTOR may be referred to herein collectively as the "Parties".

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the CITY's financial records by an independent Certified Public Accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the CITY to have its records and accounts audited annually and have an annual financial statement prepared based on the audit; and

WHEREAS, the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"), the State of Texas Uniform Grant Management Standards ("UGMS"), and the Texas Grant Management Standards ("TxGMS") contain certain audit and financial reporting requirements; and

WHEREAS, the CITY issued a Request For Proposal for Independent External Audit Services ("RFP") and received and evaluated three proposals, including a proposal from BKD, LLP; and

WHEREAS, effective June 1, 2022, the certified public accounting firm Dixon Hughes Goodman, LLP ("DHG") merged into the public accounting firm BKD, LLP ("BKD"), a Missouri limited liability partnership; and because the Missouri statutes do not provide for a statutory conversion of re-domestication to become domiciled in another state, and it is the desire of the merged partnership to be domiciled in Delaware, BKD merged with and into FORVIS, LLP, setup by BKD solely for this purpose; and

WHEREAS, the CITY has gone through an extensive selection process and through such process has chosen CONTRACTOR to provide the services described herein for a three-year period to include the required audits for the fiscal years ending September 30, 2022, 2023, and 2024, with two (2) one (1) year options to extend the Contract for fiscal years 2025 and 2026; NOW THEREFORE:

FOR VALUABLE CONSIDERATION, the Parties hereto severally and collectively agree, and

by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

ARTICLE I **DEFINITIONS**

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

- 1.1 “CITY” is defined in the preamble of this Contract and includes its successors and assigns.
- 1.2 “CONTRACTOR” is defined in the preamble of this Contract and includes its successors.
- 1.3 “Director” shall mean the CITY’s Finance Department Director / Deputy Chief Financial Officer or designee, unless otherwise specified.
- 1.4 “Local Government Record” shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

ARTICLE II **TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall begin upon the effective date of the ordinance awarding the contract and terminate upon completion of the third year’s financial audit for fiscal year 2024, estimated to be around March 2025, unless renewed.
- 2.2 Renewals. At CITY’s option, this Contract may be renewed under the same terms and conditions for up to two (2) additional, one (1) year periods for financial audits of fiscal years 2025 and 2026. Renewals shall be in writing and signed by CFO or his designee, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefor. An election by CITY not to renew the Contract shall require no action or notification by the CITY to CONTRACTOR.
- 2.3 If funding for the entire Contract is not appropriated at the time this Contract is entered into, CITY retains the right to terminate this Contract at the expiration of each of CITY’s budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.
- 2.4 In the event CITY requests CONTRACTOR to provide any of the contingent additional services set out in Article III, Scope of Services, the commencement and termination dates shall be established in the written request from the Director and as agreed to by the

CONTRACTOR. The terms and conditions of this Contract shall continue to apply to the provision of such contingent additional services as mutually agreed to by both parties until the completion of such contingent additional services to the satisfaction of the Director.

ARTICLE III **SCOPE OF SERVICES**

CONTRACTOR, in accordance with each annual engagement letter or request for contingent additional services as applicable, shall provide the following services:

PROVISION OF SERVICES

- 3.1 It is acknowledged and understood that before the commencement of the provision of services described in this Article, for each fiscal year of this Contract, CONTRACTOR will execute an annual engagement letter with the CITY that will establish the obligations, duties and scope of the CONTRACTOR's responsibility for each year's audit, and the total compensation for each year's audit that CONTRACTOR will be paid, consistent with the provisions contained in Article IV, Compensation to Contractor.
- 3.2 Incorporation by Reference. CITY and CONTRACTOR mutually agree that the annual engagement letters shall become part of this Contract, each time one is executed in accordance with this Article, and that this Contract and the annual engagement letters for the respective fiscal year shall govern the agreement between the parties for the fiscal year noted in the annual engagement letters. Any conflict between specific provisions of this Contract and similar provisions of the engagement letters, this Contract will prevail.
- 3.3 The annual engagement letters for fiscal year 2022, executed by CONTRACTOR, attached hereto as **Exhibit A**, is hereby incorporated into this Contract, and specifically made a part hereof as though it is fully set out herein.
- 3.4 The parties hereto acknowledge and agree that prior to the commencement of the fiscal years 2023 and 2024, (and, if applicable through renewal and extension of this Contract, fiscal years 2025 and 2026) audits, herein required, CITY and CONTRACTOR will execute new annual engagement letters for each upcoming fiscal year. Those annual engagement letters, once executed, shall be incorporated herein for that next fiscal year, and shall supersede the previously incorporated annual engagement letters for audit services.
- 3.5 In the event of a conflict or inconsistency between the specific terms of this Contract and the similar provisions of any of the annual engagement letters ultimately incorporated herein as **Exhibit A**, the terms of this Contract shall govern and prevail.

INDEPENDENT AUDIT SERVICES

- 3.6 CONTRACTOR shall audit the financial statements of CITY during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles as applicable to governmental entities. CONTRACTOR shall also perform auditing procedures in accordance with Government Auditing Standards, the Single Audit Act Amendments of 1996, Uniform Guidance, UGMS, TxGMS and the requirements for the audit of Passenger Facility Charges as required under 14 CFR 158.67 Section (c). It is understood that this audit will be conducted in accordance with Government Auditing Standards and generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary, as determined by CONTRACTOR. These standards require that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free of material misstatement. Accordingly, the audit will not include a detailed audit of transactions to the extent which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. San Antonio Water System, CPS Energy, San Antonio Fire and Police Pension Fund, San Antonio Fire and Police Retiree Health Care Fund, and certain other component units of CITY are audited by other auditors or under contracts separate from CITY. These component units which currently are, or those which may be included in the future, with the applications of GASB Statement No. 14, *The Financial Reporting Entity*, and GASB Statement No. 39, *Determining Whether Certain Organizations Are Component Units*, as modified by GASB Statements No. 80, *Blending Requirements for Certain Component Units – An Amendment of GASB Statement No. 14*, and No. 61, *The Financial Reporting Entity: Omnibus – An Amendment of GASB Statements No. 14 and 34*, are included in the scope of work to be performed hereunder but limited only to their respective incorporation into CITY's Annual Comprehensive Financial Report (ACFR), except for the City of San Antonio Municipal Aides Corporation (LGC), which the scope will require a separate audit to be performed for this entity. The initial year of the LGC audit will not only cover fiscal year 2022, but also the beginning balance, as there was not an external audit conducted on the four-month stub year for fiscal year 2021's financial statements. Component units are included in the ACFR based on information obtained from their separately issued audited financial reports.

ANNUAL REPORTS

- 3.7 CONTRACTOR agrees to perform the annual audit in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards issued by the Comptroller General of the United States, Office of Management and Budget Uniform Guidance, UGMS, TxGMS and any other authoritative pronouncements which may be deemed applicable. Those standards require that CONTRACTOR plan and perform the audit to obtain reasonable assurance about whether the basic financial statements as required and in accordance with GASB Statement No. 34, *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

An audit will further include a review of the system of internal control and tests of transactions to the extent necessary. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the audit opinion will be other than unmodified, the reasons therefore will be fully disclosed. The audit opinion will be signed by CONTRACTOR who will assume responsibility for the audit of the financial statements of CITY.

- 3.8 CITY agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls and the recording of financial transactions, and that the Contract price for the audits by CONTRACTOR as quoted in Article IV, Compensation to Contractor, is predicated upon this continued conformance with existing and currently known Standards that will impact the CITY over the course of this Contract. In addition, this Contract is based on the number of major programs to be presented in the Contract periods' Schedules of Federal and State Expenditures (Single Audit Reports) and the number of major funds to be presented in the Contract periods' ACFR not substantially changing from a base of sixteen (16) major programs and twelve (12) major funds [opinion units], respectively, the Passenger Facility Charge Audit, a Government Financial Assurance Agreed Upon Procedure (AUP) related to Nelson Gardens for the Texas Commission on Environmental Quality (TCEQ), and a stand-alone audit for the LGC. Significant increases or decreases to either the CITY's major programs or major funds to be presented in future Single Audit Reports or ACFRs may be negotiated as to cost for additional or reduced audit work and is to be mutually agreed to by CONTRACTOR and CITY in accordance with Article XV, Amendments. CITY agrees that a complete set of basic financial statements along with required supplementary information (RSI) will be prepared by its Department of Finance as nearly as practicable in accordance with the form outlined in the then most current version of "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the CONTRACTOR in sufficient time (as completed) for full reconciliation with CONTRACTOR's findings, and to facilitate publication of the ACFR not later than March 1st of the year following the fiscal year involved in the audit, or such earlier date established by CITY and CONTRACTOR in the Audit Engagement Letters for that year. For good cause, CITY and CONTRACTOR can extend the date beyond March 1st by so providing in writing that is fully executed and delivered not later than February 15th. City Council approval of any such extension(s) shall not be required. The CITY will also provide the CONTRACTOR a draft ACFR by February 1st of the year under audit that is complete of any adjustments and solely pending inclusion of CITY's Component Units. CITY further agrees that a complete Single Audit Report and Schedule of Expenditures of Passenger Facility Charges (PFC Report) will be prepared by its Department of Finance in accordance with Uniform Guidance and other applicable standards and provided to the CONTRACTOR in sufficient time (as completed) for full reconciliation with CONTRACTOR's findings, and to facilitate publication of CITY's Single Audit and PFC Reports simultaneously with the CITY's ACFR. The timing of the completion of CONTRACTOR's auditor reports to be included in the CITY's Single Audit and PFC Reports is dependent on the cooperation received from CITY department involved with the

programs under audit in clearing audit findings and responding to the audit findings to be included in such reports. CONTRACTOR shall promptly notify CITY in writing in the event delay is encountered in receiving records and other information from CITY departments. If no written notice is received from CONTRACTOR, it will be assumed that no delay has been encountered, and no extension beyond March 1st will be available for this reason. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, and schedules of expenditures, management's responses to audit findings which are the representations of management, are with CITY.

- 3.9 CITY shall have completed and balanced all accounts including a first period general ledger and have prepared basic financial statements and schedules as required by and in accordance with all applicable GASB Statements to be audited by the CONTRACTOR by December 22nd of the year under contract and shall work with CONTRACTOR regarding working onsite or remotely as deemed adequate by CONTRACTOR for efficient conduct of the audit. CITY shall provide CONTRACTOR for its use and retention, copies of these financial statements and schedules, and shall provide CONTRACTOR with trial balances of the various financial statements as required and in accordance with all applicable GASB Statements in a form reasonably acceptable to CONTRACTOR.
- 3.10 The Auditors' Report that will be included in the CITY's ACFR and LGC stand-alone financial statements will be completed and available for distribution not later than March 1st of the year following the fiscal year involved in the audit, or such earlier date established by CITY and CONTRACTOR in the Audit Engagement Letters for that year. The Report on Internal Control (Management Letter), Single Audit Reports, PFC Report, and Government Financial Assurance AUP will be completed and available for distribution simultaneously with the ACFR. For good cause, CITY and CONTRACTOR can extend the date beyond March 1st by so providing in writing that is fully executed and delivered not later than February 15th. City Council approval of any such extension(s) shall not be required.

GENERAL PERFORMANCE CONDITIONS

- 3.11 CONTRACTOR shall at all times be sufficiently staffed with personnel qualified to render all of its services specified in this Contract.
- 3.12 CONTRACTOR shall advise CITY on pending government accounting issues.
- 3.13 CONTRACTOR shall conduct the examination with minimal disruption and interference with CITY's normal day-to-day operations.
- 3.14 CONTRACTOR shall retain working papers for at least five years and to make them available for examination by the CITY or its authorized representatives as required.
- 3.15 CONTRACTOR shall work with the CITY in meeting its goal to reduce the timeframe in which the examination and final documents for the ACFR, Single Audit Report,

Management Letter, PFC Schedule and Local Government Financial Assurance AUP as well as the LGC's financial audit, are completed and delivered after the fiscal year-end, so that the fieldwork of the CITY's financial records, to include all auditor recommended adjustments associated with the CITY's and LGC's financials, management letter items and Single Audit are completed by January 31st of the following year. The CITY recognizes that due to the timing of non-major component unit reports the ACFR may not be completed by the end of January; however, the anticipation is that those component units be the only pending item left with a final release no later than February 14th of the following year. In the event February 14th is not attainable, prior written communication shall be provided to the CITY indicating the revised date for completion of the examination to include explanation for the delay.

- 3.16 CONTRACTOR shall provide normal consultation to CITY on various matters related to the audit, governmental accounting standards and the CITY's internal control procedures, at no additional charge during the term of this Contract.
- 3.17 CONTRACTOR shall make available training on mutually agreed topics to professional accounting and finance staff of CITY's Finance Department, Office of the Internal Auditor, and other CITY personnel equivalent to sixteen (16) continuing professional education (CPE) hours per fiscal year. These services will be considered as part of the fee structure for the independent audit for each fiscal year.
- 3.18 Upon completion of five (5) consecutive annual audits by an engagement partner, CONTRACTOR shall replace its existing engagement partner with a new engagement partner who is reasonably acceptable to CITY, to maintain objectivity and credibility on future audit engagements. If applicable, this requirement shall carry over from any prior CITY Audit Services Contract and will also apply to CITY's future Requests for Proposal (RFPs) for Independent External Audit Services.

CONTINGENT ADDITIONAL SERVICES

- 3.19 During the term of the Contract, the CITY may, on an as requested basis, utilize CONTRACTOR for guidance on tax, compliance, and other non-audit consultation matters, perform various agreed upon procedures, contract compliance reviews or other services which may be required for a CITY bond offering. The Financial Assurance Test related to Nelson Gardens are included in Section 3.8 above and are not considered contingent additional services. In addition, at its discretion, the CITY may request that CONTRACTOR aid with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements, within limits to ensure continued Independence compliance.
- 3.20 The CITY may also periodically require services to assist in the resolution of audit findings and questioned costs reported to Federal and State Agencies.
- 3.21 If requested, and CONTRACTOR agrees, CONTRACTOR shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the CFO or his designee in the forwarded request (Section 3.22),

revisions to terms and conditions mutually agreed to by the parties, and additional terms and conditions as set forth in the applicable Engagement Letter governing the provision of such service(s).

- 3.22 CITY will initiate such a request for contingent additional services by forwarding a written request, executed by the CFO or his designee, to CONTRACTOR at its respective address provided herein. Within said request, the CFO or his designee shall state the scope of services to be provided; the period of time within which said services are to be completed; and the consideration to be paid by CITY for the services provided, in accordance with Section 4.6.
- 3.23 CONTRACTOR may agree, subject to its engagement acceptance procedures to provide the following services at the request of the CITY in accordance with Section 3.26 of the GAO Amendment No. 3 and any other applicable standards:
 - 3.23.1 Providing advisory services on tax, compliance, or other non-audit consultation matters.
 - 3.23.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.
 - 3.23.3 Advisory services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.
 - 3.23.4 Other services that may be required for a CITY bond offering.
 - 3.23.5 Services related to forensic reviews and analyses of CITY accounts, records, departments, contracts, or similar matters.
 - 3.23.6 Attestation services to assist in the performing various agreed-upon procedures that would be permissible and not impair the independence of the CONTRACTOR to continue to work on this Contract.
- 3.24 In the event the CITY requests contingent additional services which, after review by the CONTRACTOR, are determined to impair independence or be in conflict with applicable standards, the CONTRACTOR is required to notify the CFO or his designee, in writing, as noted in Article VIII, Notice, within ten (10) business days of receipt of said request. This written notice is to include a detailed description of the impairment or conflict.

QUALITY CONTROL REVIEWS

- 3.25 On an annual basis, the CITY receives financial assistance in the form of Federal and State grants and as such, Federal and State agencies may conduct a Quality Control Review of the CITY's annual audit. In accordance with guidance provided in the Council of Inspectors General on Integrity and Efficiency (CIGIE) Guide for Desk Reviews of A-133 Audits, the CIGIE Guide for Single Audit Reports (Desk Guides) and the CIGIE Uniform Guide for Quality Control Reviews of A-133 Audits, time expended by outside independent auditors with Federal agencies during a Quality Control Review is not expected to be charged to Federal awards. A Quality Control Review is viewed to be similar in nature to other quality control mechanisms such as training, auditor policies and procedures, and peer reviews. Therefore, the CITY will not reimburse CONTRACTOR for charges associated with

Quality Control Reviews conducted by Federal agencies.

- 3.26 Pursuant to Government Auditing Standards, CONTRACTOR is required to make certain work papers available to federal regulatory agencies upon request, for their reviews of audit quality and use by their auditors. Access to the requested work papers will be provided to the regulators under supervision of CONTRACTOR's personnel. Unless CONTRACTOR is prohibited from doing so by law, CITY shall be notified within five (5) working days by CONTRACTOR in the event of any such request. CITY will not reimburse costs incurred by CONTRACTOR related to such review of audit quality. To the extent such work papers are used by the regulators for purposes other than reviews of audit quality and/or to the extent that regulators or grantors request additional procedures beyond the requirements of the Single Audit Act Amendments of 1996, Uniform Guidance, UGMS, and TxGMS, CONTRACTOR will notify and discuss such request with CITY prior to any costs being incurred by CONTRACTOR.
- 3.27 Except with respect to a dispute or litigation between CONTRACTOR and the CITY, CONTRACTOR's costs and time spent in legal and regulatory matters or proceedings arising from our engagement (except such reviews of audit quality addressed in Sections 3.25 and 3.26 above), such as subpoenas, testimony, or consultation involving private litigation, arbitration, industry or government regulatory inquiries, whether made at the CITY's request or by subpoena, will be billed to the CITY separately.
- 3.28 Any such costs agreed to be reimbursed by CITY pursuant to Section 3.27 above will be based on fees negotiated on an individual basis. To the extent funds are appropriated in the then current CITY Budget for the payment of such fees, approval and appropriation by CITY's City Council shall not be required.

CITY STAFF ROLE / AUDIT ASSISTANCE

- 3.29 During the audit process, staff of the CITY's Finance Department will be responsible for the preparation of the aforementioned annual reports including the financial statements, related note disclosures, schedules of federal and state financial assistance, other required information/schedules, and supporting work papers. In addition, CITY staff will prepare any additional schedules deemed necessary by CONTRACTOR. With regard to new accounting standards or pronouncements required to be implemented during the term of the Contract, CITY staff will prepare an initial analysis of the impact to the CITY to include a proposed implementation plan, if applicable. The implementation of these new standards or pronouncements will be coordinated with CONTRACTOR.
- 3.30 The CITY maintains an independent internal audit function with the Office of the Internal Auditor reporting to the Mayor and Council, through the Audit and Accountability Committee. The Office of the Internal Auditor will not provide staff hours towards assisting CONTRACTOR in the performance of the Contract.

ARTICLE IV
COMPENSATION TO CONTRACTOR

- 4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Contract, CITY agrees to pay CONTRACTOR the total of all payments and other obligations made and incurred by CITY hereunder, in performance of the audit services provided for in Article III, Scope of Services, for fiscal years 2022, 2023 and 2024 shall not exceed the base amount indicated below. If this Contract is renewed and extended for fiscal years 2025 or 2026, the total of all payments and other obligations made and incurred by CITY hereunder, in performance of the audit services provided for in Article III, Scope of Services, for those fiscal years shall not exceed the base amounts indicated below. If major programs or major funds are significantly different from the estimate noted in Section 3.8, incremental costs per major program or fund shall not exceed the amounts for each of the fiscal year indicated.

Participation of Firms – City of San Antonio Audit					
<i>Independent Audit Services</i>					
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Base Fees:					
Prime	\$512,200	\$527,800	\$543,400	\$559,520	\$576,160
Subcontractors	472,800	487,200	501,600	516,480	531,840
Total Base Fees	\$985,000	\$1,015,000	\$1,045,000	\$1,076,000	\$1,108,000
Sub Base Fees % Total Base Fees	48%	48%	48%	48%	48%
Incremental Fees:					
Opinion Unit	\$12,000	\$12,500	\$13,000	\$13,500	\$14,000
Major Program	\$12,000	\$12,500	\$13,000	\$13,500	\$14,000

Participation of Firms – LGC Audit					
<i>Independent Audit Services</i>					
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Base Fees:					
Prime	\$6,240	\$6,240	\$6,396	\$6,578	\$6,760
Subcontractors	5,760	5,760	5,904	6,072	6,240
Total Base Fees	\$12,000	\$12,000	\$12,300	\$12,650	\$13,000
Sub Base Fees % Total Base Fees	48%	48%	48%	48%	48%

- 4.2 CONTRACTOR agrees that all CONTRACTOR labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, and all other CONTRACTOR expenses necessary to complete the services stated herein shall be borne at CONTRACTOR's sole cost and

expense, unless the CITY requests and approves in writing for CONTRACTOR to travel to locations outside of San Antonio, Texas in advance of said trip.

- 4.3 All progress billings for the annual fees established herein will be rendered by the CONTRACTOR to the CITY in a detailed breakdown of services provided by CONTRACTOR and subcontractors to include at a minimum the following information broken out for the ACFR, Single Audit, PFC Reports and Local Government Financial Assurance AUP shall be presented in the following format:

	<u>Position Rate</u>	<u>Hours</u>	<u>Amount</u>
Partner	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Manager	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Senior	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Staff	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Total Labor		Total Hours	\$(Total Labor)
			\$(Total Expenses)
Total Costs			\$(Total Labor & Expenses)
Less: Retainage			<u>\$(10% of Total Costs)</u>
Total Due			\$(Total Costs minus Retainage)

Upon receipt of such billing statements, the amount due will be paid by the CITY as specified on such statements. However, CITY will retain ten percent (10%) of the total annual fee, until the ACFR, Single Audit Reports, PFC Report, Local Government Financial Assurance AUP and Management Letter have been completed and delivered to CITY.

- 4.4 A separate progress billing for the annual fees established herein will be rendered by the CONTRACTOR to the CITY using the same format as noted in Section 4.3 for the LGC. Upon receipt of such billing statements, the amount due will be paid by the CITY on behalf of the LGC as specified on such statements. However, CITY will retain ten percent (10%) of the total annual fee, until the LGC's financial statements have been completed and delivered to CITY.
- 4.5 In the event that extenuating circumstances are encountered, as to materially alter the performance and scope of work hereunder, it may be necessary for CONTRACTOR to consider the issuance of a settlement statement which details and compares the actual work performed against the original audit plan. However, in no instance will the CITY make any payment for the services provided in excess of the annual amounts as stated for each fiscal year established in this Article without formal written revision of this Contract.

- 4.6 The services to be provided by CONTRACTOR in FY 2022-2023 and FY 2023-2024 are subject to appropriation of funds in CITY's Budget for the respective Budget Year to pay for those services. If funds are not appropriated in CITY's Budget for the respective Budget Year, CITY shall have the right to terminate this Contract prior to the commencement of that Budget Year by following the provisions of Section 7.2 of this Contract.
- 4.7 Payments for contingent additional services provided in accordance with Article III, Scope of Services, and payments for any costs to be reimbursed by CITY in accordance with this Article IV, Compensation to Contractor, will be based on fees negotiated on an individual engagement basis in accordance with the hourly personnel rates agreed to below and any applicable costs as noted in section 4.2 associated with the additional services. CONTRACTOR shall prepare and submit a billing statement to CITY specifying the scope of work performed and amount due. Upon receipt of the billing statement, CITY will review and if in compliance with the negotiated fee, shall pay the amount specified due on such statement to CONTRACTOR.

<i>Other Services:</i>					
Position	FY 2022 Hourly Rate	FY 2023 Hourly Rate	FY 2024 Hourly Rate	FY 2025 Hourly Rate	FY 2026 Hourly Rate
Partner	\$404	\$416	\$428	\$441	\$454
Manager	260	268	276	284	293
Senior	208	214	220	227	234
Staff	156	161	166	171	176

- 4.8 CONTRACTOR shall submit invoices to CITY upon completion of services, in a form acceptable to CITY, which CITY shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: Accounts.Payable@sanantonio.gov following requirements noted at <https://www.sanantonio.gov/purchasing/howtodobusiness#12775550-invoicing--payment> with a curtesy copy to Victoria Roeder, Controller, at victoria.roeder@sanantonio.gov.

Invoices may alternatively be mailed to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976. Invoices are required to include Purchase Orders, which are re-issued for each year's engagement.

- 4.9 In accordance with the Texas Prompt Payment Act, CITY shall have not less than 30 days to pay for services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date performance of the service under the contract is completed or (2) the date CITY receives a correct and valid invoice for the services. Payment is deemed to be made on either the date of mailing of the check or the date of ACH submission. Payment is made in US dollars only.

This provision shall not apply where there is a bona fide dispute between CITY and CONTRACTOR about the service performed that causes the payment to be late, or where

the invoice is either missing the associated engagement's purchase order or is not mailed to the address provided herein.

- 4.10 The payment amount due on invoices may not be manually altered by CITY personnel. Once disputed items are reconciled, CONTRACTOR must submit a corrected invoice or a credit memorandum for the disputed amount.
- 4.11 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by CITY. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in this Article.
- 4.12 Final acceptance of work products and services require written approval by CITY. The approving official shall be Director. Payment will be made to CONTRACTOR following written approval of the final work products and services by Director. CITY shall not be obligated or liable under this Contract to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

ARTICLE V

OWNERSHIP OF DOCUMENTS

- 5.1 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all Local Government Records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such Local Government Records produced by or on the behalf of CONTRACTOR pursuant to this Contract shall be the subject of any copyright or proprietary claim by CONTRACTOR.
- 5.2 CONTRACTOR acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of CITY. CONTRACTOR will turn over to CITY all such records. CONTRACTOR shall not, under any circumstances, release any records created during performance of this contract to any entity without CITY's written permission, unless required to do so by a Court of competent jurisdiction.
- 5.3 In accordance herewith, CONTRACTOR agrees to comply with all applicable federal, state, and local laws, rules and regulations governing documents and ownership, access, and retention thereof.
- 5.4 CITY agrees to assume full responsibility for maintaining original data and records and that CONTRACTOR has no responsibility to maintain this information. CITY agrees it will not rely on CONTRACTOR to provide hosting, electronic security, or backup services, *e.g.*, business continuity or disaster recovery services, to CITY unless separately engaged to do so. CITY understands that its access to data, records, and information from CONTRACTOR's servers, *i.e.*, CONTRACTOR portals used to exchange information, can

be terminated at any time and CITY will not rely on using this to host CITY data and records.

- 5.5 CONTRACTOR's workpapers and documentation retained in any form of media for this engagement are the property of CONTRACTOR. CONTRACTOR can be compelled to provide information under legal process. In addition, CONTRACTOR may be requested by regulatory or enforcement bodies (including any State Board) to make certain workpapers available to them pursuant to authority granted by law or regulation. Unless CONTRACTOR is prohibited from doing so by law or regulation, CONTRACTOR will inform CITY of any such legal process or request. CITY agrees CONTRACTOR has no legal responsibility to CITY in the event CONTRACTOR determines it is obligated to provide such documents or information.
- 5.6 CITY agrees it will not modify beyond immaterial formatting changes necessary for presentation (e.g. page numbering) any deliverables or drafts prepared by CONTRACTOR for internal use or for distribution to third parties. CITY also understands that CONTRACTOR may on occasion send CITY documents marked as draft and understand that those are for review purpose only, should not be distributed in any way, and should be destroyed as soon as possible.

CONTRACTOR's report on any financial statements must be associated only with the financial statements that were the subject of its engagement. CITY may make copies of the report, but only if the entire financial statements (exactly as attached to the report, including related footnotes) and any supplementary information, as appropriate, are reproduced and distributed with the report. CITY agreed not to reproduce or associate CONTRACTOR's report with any other financial statements, or portions thereof, that are not the subject of this engagement.

- 5.7 CITY may wish to include CONTRACTOR's report(s) on financial statements in an exempt offering document. CITY agrees that any report, including any auditor's report, or reference to CONTRACTOR, will not be included in any such offering document without notifying CONTRACTOR. Any agreement to perform work in connection with an exempt offering document, including providing agreement for the use of the auditor's report in the exempt offering document, will be a separate engagement as noted in Section 3.23.

Any exempt offering document issued by CITY with which CONTRACTOR is not involved will clearly indicate that CONTRACTOR is not involved by including a disclosure such as, **"FORVIS, LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. FORVIS, LLP also has not performed any procedures relating to this offering document."**

- 5.8 CITY agrees to notify CONTRACTOR if it desires to place CONTRACTOR's report(s), including any reports on CITY financial statements, along with other information, such as a report by management or those charged with governance on operations, financial summaries or highlights, financial ratios, etc., on an electronic site, besides CITY's transparency website, Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website, and the Federal Audit Clearinghouse website, as required

by regulators. CITY recognizes that CONTRACTOR has no responsibility to review information contained in electronic sites.

- 5.9 In the interest of facilitating services to CITY, CONTRACTOR may send data over the internet, temporarily store electronic data via computer software applications hosted remotely on the internet or utilize cloud-based storage. CITY's confidential electronic data may be transmitted or stored using these methods. In using these data communication and storage methods, CONTRACTOR employs measures designed to maintain data security. CONTRACTOR uses reasonable efforts to keep such communications and electronic data secure in accordance with its obligations under applicable laws, regulations, and professional standards.

CITY recognizes and accepts that CONTRACTOR has no control over the unauthorized interception or breach of any communications or electronic data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by CONTRACTOR. CITY consents to CONTRACTOR use of these electronic devices and applications during this engagement.

- 5.10 **Proprietary Information.** CITY acknowledges that proprietary information, documents, materials, management techniques, and other intellectual property are a material source of the services CONTRACTOR performs and were developed prior to CONTRACTOR's association with CITY. Any new forms, software, documents, or intellectual property We develop during this engagement for CITY's use shall belong to CONTRACTOR, and CITY shall have the limited right to use them solely within CITY's business. All reports, templates, manuals, forms, checklists, questionnaires, letters, agreements, and other documents which CONTRACTOR makes available to CITY are confidential and proprietary to CONTRACTOR. Neither CITY, nor any of its agents, will copy, electronically store, reproduce, or make any such documents available to anyone other than CITY personnel. This provision will apply to all materials whether in digital, "hard copy" format, or other medium.

ARTICLE VI

RECORDS RETENTION

- 6.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents") necessary to support any invoice rendered to the CITY, and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 6.2 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of five (5) years (hereafter referred to as "retention period") from the date of termination of the Contract and in accordance with all applicable laws, rules, regulations and professional standards, including, but not limited to, Title 22 of the

Texas Administrative Code Section 501.76 and Statement on Auditing Standards No. 103, *Audit Documentation* (codified as AU Section 339). If, at the end of the retention period, there is litigation or other questions arising from, involving, or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or other such questions. CONTRACTOR acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. CITY may, at its election, require CONTRACTOR to return the documents to CITY at CONTRACTOR's expense prior to or at the conclusion of the retention period. In such event, CONTRACTOR may retain a copy of the documents at its sole cost and expense.

- 6.3 CONTRACTOR shall notify CITY, immediately, in the event CONTRACTOR receives any requests for information from a third party, which pertain to the documentation and records referenced herein, unless CONTRACTOR is prohibited by law from notifying CITY. CONTRACTOR understands and agrees that CITY will process and handle all such requests. If CONTRACTOR is required to disclose such documentation and records in response to a court order, subpoena, administrative process or request from an accounting oversight body, or as otherwise required under law or regulation, CONTRACTOR shall provide CITY with sufficient notice to allow it to seek a protective order or other applicable relief from disclosure, unless CONTRACTOR is prohibited by law from notifying CITY.
- 6.4 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the CITY in a given fiscal year, CONTRACTOR acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the CITY or sent between the CITY and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. CONTRACTOR agrees that the contract can be terminated if CONTRACTOR knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.5 CONTRACTOR warrants and certifies, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous contract. CITY hereby relies on CONTRACTOR's certification, and if found to be false, CITY may terminate this Contract for material breach.

ARTICLE VII

TERMINATION

- 7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

- 7.2 Termination Without Cause. This Contract may be terminated by either Party without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. If either Party elects to terminate for convenience as described, the CITY shall pay CONTRACTOR for services rendered up to and including date of termination.
- 7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, CITY may terminate this Contract by giving written notice of termination to the CONTRACTOR, as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Contract:
- 7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Contract without prior approval, as provided in Article XI. Assignment and Subcontracting;
 - 7.3.2 Neglect or failure by CONTRACTOR to perform or observe any of the terms, conditions, covenants, or guarantees of this Contract or of any amendment between CITY and CONTRACTOR;
 - 7.3.3 Failure by CONTRACTOR to correct any deficiency therein within the time allotted, as specified in a written notice from CITY to CONTRACTOR sent pursuant to Article VIII, Notice; or
 - 7.3.4 Any material breach of the terms of this Contract, as determined solely by CITY.
- 7.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this Contract 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 ten (10) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONTRACTOR fails to cure the default within such ten (10) calendar day cure period, CITY shall have the right, without further notice, to terminate this Contract in whole or in part as CITY deems appropriate, and to contract with another contractor to complete the work required in this Contract. CITY shall also have the right to offset the cost of said new Contract with a new contractor against CONTRACTOR's future or unpaid invoice(s), subject to the duty on the part of CITY to mitigate its losses to the extent required by law.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIII. SBEDA;
 - 7.4.2 Bankruptcy or selling substantially all of company's assets;
 - 7.4.3 Failing to perform or failing to comply with any covenant herein required; or
 - 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Contract is terminated, CONTRACTOR shall effect an orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts,

reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by CONTRACTOR in accordance with Article VI. Records Retention, provided that CONTRACTOR determines in its sole discretion it is able to provide such reports under applicable professional standards. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested by CITY.

- 7.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Contract, CONTRACTOR shall submit to CITY its claims, in detail, for the monies owed by CITY for services performed under this Contract through the effective date of termination. Failure by CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Contract.
- 7.8 Upon the effective date of expiration or termination of this Contract, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR or any of its subcontractors pursuant to this Contract. CITY shall pay CONTRACTOR any fees incurred prior to the date of termination.
- 7.9 Termination not sole remedy. In no event shall CITY's action of terminating this Contract, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONTRACTOR for any default hereunder or other action.
- 7.10 Force Majeure. Should performance of any obligation created under this Contract become illegal or impossible by reason: fire or other casualty, act of God, act of terrorism, strike or labor dispute, war or other violence, explosion, flood or other natural catastrophe, epidemic or pandemic, or any law, order, or requirement of any governmental agency or authority affecting either Party, including without limitation orders incident to any such epidemic or pandemic, lockdown orders, stay-at-home orders, and curfews which is beyond the reasonable control of the Party whose performance is affected, then such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides reasonable notice of the event of force majeure and exercises all reasonable diligence to remove the cause of force majeure.

ARTICLE VIII

NOTICE

Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or

if in writing and mailed, certified mail, postage prepaid, to 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: Troy Elliott, Deputy Chief Financial Officer
P.O. Box 839966
San Antonio, Texas 78283-3966

With Copy to:

City of San Antonio
Attn: Melanie Keeton, Assistant Finance Director
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONTRACTOR, to:

FORVIS, LLP
910 East St. Louis Street, Suite 400
Springfield, MO 65806

With Copy to:

FORVIS, LLP
Attn: Amanda Eaves, Partner
2700 Post Oak Blvd, Suite 1500
Houston, Texas 77056

ARTICLE IX
INSURANCE

- 9.1 Prior to the commencement of any work under this Contract, CONTRACTOR shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the Finance Department which shall be clearly labeled "*Independent External Audit Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and phone number. The certificate shall 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 Contract until such certificate and endorsements have been received and approved by the Finance Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- 9.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this Contract 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 Contract. In no instance will CITY allow modification whereby CITY may incur increased risk.
- 9.3 A CONTRACTOR's financial integrity is of interest to the CITY; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONTRACTOR shall obtain and maintain in full force and effect

for the duration of this Contract, and any extension hereof, at 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	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability 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. Non-owned vehicles b. 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.

- 9.4 CONTRACTOR agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of 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 CONTRACTOR. CONTRACTOR shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this contract. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.
- 9.5 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 required endorsements. CONTRACTOR shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within 10 days. CONTRACTOR shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 9.6 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 CITY of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 9.8 In addition to any other remedies the CITY may have upon 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 CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.
- 9.9 Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this contract.
- 9.10 It is agreed that 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 contract.

- 9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
- 9.12 CONTRACTOR and any subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE X

INDEMNIFICATION

- 10.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Contract, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage, or to any liability resulting from the knowing misrepresentations of CITY, its officers or employees. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this Contract and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.
- 10.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY unless such right is expressly waived by CITY in writing. Such selection or approval

shall not be unreasonably made or withheld. CONTRACTOR shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.
- 10.5 CITY will pay to CONTRACTOR all costs and all other sums or expenses of any nature of type whatsoever that are imposed upon or sought from CONTRACTOR that arise from and are directly related to CITY's knowing misrepresentation, willful misconduct, or fraudulent behavior in connection with its activities under this Contract. CONTRACTOR shall advise CITY in writing within five (5) business days of any demand, claim or proceeding to which CONTRACTOR believes this Section is applicable. CITY shall have the right, at its option and at its own expense, to defend any such demand, claim, or proceedings, or to participate in such defense. CITY and CONTRACTOR agree that this Section 10.5 does not constitute the main or essential purpose of this Contract, and should this provision be deemed not permitted by law, it is the desire and intention of both CITY and CONTRACTOR that this Contract not be declared void, but that rather, the Contract be construed in accordance with Article XXV below.
- 10.6 CONTRACTOR's liability under the terms of this Contract WILL NOT INCLUDE responsibility for any claimed exemplary or punitive damages even if CONTRACTOR was advised in advance of such potential damages. This provision SHALL NOT APPLY in the event of CONTRACTOR's gross negligence or willful misconduct.
- 10.7 Parties shall make reasonable efforts to resolve any dispute arising out of or related to this engagement prior to resorting to litigation. If Parties agree to mediation, both parties agree to try in good faith to settle the dispute in mediation. Any mediator will be selected by agreement of the parties. To the extent allowed by law, the mediation proceeding shall be confidential. Each party will bear its own costs in the mediation, but the fees and expenses of the mediator will be shared equally.

ARTICLE XI

ASSIGNMENT AND SUBCONTRACTING

- 11.1 CONTRACTOR shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to

this Contract shall be the employees or subcontractors of CONTRACTOR. CONTRACTOR, its employees, or its subcontractors shall perform all necessary work.

- 11.2 It is CITY's understanding and this Contract is made in reliance thereon, that CONTRACTOR intends to use the following subcontractors in the performance of this Contract: Armstrong, Vaughan & Associates, PC (8%); Britts & Associates, LLP (15%); Robert J. Williams, CPA (9%); and Schriver, Carmona & Company, PLLC (16%) as provided in **Exhibit C**, Contractor's City of San Antonio Subcontractor/Supplier Utilization Plan. Due to the professional experience required to perform the CONTRACTOR services specified in this Contract, any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved in writing by the CITY's Director and CITY's Director of Economic Development before engaging and utilizing the services of any subcontractor other than the four (4) subcontractors approved in this section.
- 11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of CONTRACTOR. CITY shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Director.
- 11.4 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of CITY. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Contract in the event of default by the successor CONTRACTOR, assignee, transferee, or subcontractor.
- 11.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, CITY may, at its option, cancel this Contract and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to CITY under this Contract. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Contract, nor shall it relieve or release CONTRACTOR from the payment of any damages to CITY, which CITY sustains as a result of such violation.

ARTICLE XII
INDEPENDENT CONTRACTOR

- 12.1 CONTRACTOR covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of “respondeat superior” shall not apply as between CITY and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between CITY and CONTRACTOR. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this Contract and that the CONTRACTOR has no authority to bind the CITY.
- 12.2 CONTRACTOR is not acting as CITY’s municipal advisor under Section 15B of the *Securities Exchange Act of 1934*, as amended. As such, CONTRACTOR is not recommending any action to CITY and does not owe CITY a fiduciary duty with respect to any information or communications regarding municipal financial products or the issuance of municipal securities. CITY should discuss such matters with internal or external advisors and experts CITY deems appropriate before acting on any such information or material provided by CONTRACTOR.

ARTICLE XIII
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

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

13.2 Definitions.

- 13.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 13.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the CITY's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the CITY through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.
- 13.2.3 **Award** – the final selection of a CONTRACTOR for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the CITY to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 13.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a CONTRACTOR's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

- 13.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the CITY recommends all prospective respondents and subcontractors that are ready, willing, and able to sell goods or services to the CITY to register. All businesses awarded a CITY contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the CITY. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.
- 13.2.6 **Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the CITY may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.
- 13.2.7 **CITY** – refers to the City of San Antonio, Texas.
- 13.2.8 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing, and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

- 13.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.
- 13.2.10 **Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.
- 13.2.11 **Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 13.2.12 **Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 13.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the CITY by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.
- 13.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a CITY department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.
- 13.2.15 **Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance/Deputy Chief Financial Officer or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint

two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

- 13.2.16 **Good Faith Efforts** – documentation of the CONTRACTOR’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the CONTRACTOR’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the CONTRACTOR; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)
- 13.2.17 **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]
- 13.2.18 **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

- 13.2.19 **Individual** – an adult person that is of legal majority age.
- 13.2.20 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale, and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- 13.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the CITY. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.
- 13.2.22 **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.
- 13.2.23 **M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the CITY’s M/WBE Program APIs.
- 13.2.24 **M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:
- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
 - (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of CITY contracts.

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

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

13.2.26 **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

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

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

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

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

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

- 13.2.29 **Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for CITY contracted goods and/or services.
- 13.2.30 **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- 13.2.31 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the CITY.
- 13.2.32 **Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 13.2.33 **Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).
- 13.2.34 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 13.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the CITY.
- 13.2.36 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- 13.2.37 **Responsive** – a firm’s submittal (bid, response, or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.
- 13.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the CITY’s 2015 Disparity Study analyzed contract utilization and availability data for disparity

(currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

- 13.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual CITY contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- 13.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the CITY's SBE Program APIs.
- 13.2.41 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- 13.2.42 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- 13.2.43 **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- 13.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

- 13.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.
- 13.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the CITY. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the CITY’s issuance of a notice to proceed.
- 13.2.47 **Suspension** – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the CITY’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.
- 13.2.48 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.
- 13.2.49 **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the CITY and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

13.3 SBEDA Program Compliance – General Provisions

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

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

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

13.3.5 CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

13.3.6 CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

13.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

13.3.8 CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR for this project has registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

13.4 SBEDA Program Compliance – Affirmative Procurement Initiatives. The CITY has applied the following contract-specific Affirmative Procurement Initiatives 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 material to its satisfactory performance under this Agreement:

13.4.1 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 or self-perform at least **forty percent (40%)** 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). If the Prime Contractor is a certified M/WBE firm, then the CONTRACTOR is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime Contractor does not self-perform a portion of the M/WBE

subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

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

13.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

13.6 Prompt Payment. Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit

of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

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

- 13.7.1 Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
- 13.7.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
- 13.7.3 Willfully obstruct, impede, or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
- 13.7.4 Fraudulently obtain, attempt to obtain, or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
- 13.7.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

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

ARTICLE XIV
CONFLICT OF INTEREST

- 14.1 CONTRACTOR acknowledges that it is informed that the City of San Antonio City Charter and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Sections 2-42 and 2-52 of the Code of Ethics, from having a financial interest in any contract with the CITY or any CITY agency, such as CITY-owned utilities. A CITY “employee” is any employee of the CITY who is required to file a financial disclosure statement pursuant to subsection 2-73(a) (Financial Disclosure Report). A CITY “officer” includes the Mayor or any Council member; a Municipal Court Judge or Magistrate; or a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the CITY. An officer or employee has a “prohibited financial interest” in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a CITY officer or employee; his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a CITY contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 14.2 Pursuant to the section above, CONTRACTOR warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. CONTRACTOR further warrants and certifies that it has tendered to the CITY a Contacts Disclosure Statement in compliance with the CITY’s Ethics Code.
- 14.3 CONTRACTOR certifies and warrants that neither CONTRACTOR nor any of its agents, representatives or employees has paid or offered to pay any bribe, kickback or similar payment or other consideration to be selected for the award of this contract or to influence the selection of its proposal.
- 14.4 CONTRACTOR certifies and warrants that after reasonable investigation to the best of its knowledge, no person who will in any way either directly participate in or directly supervise any agent, representative or employee who directly participates in the performance of the obligations hereunder has or will have any conflict of interest, direct or indirect, with CITY. For purposes of this subsection, “conflict of interest” shall mean that the entity or person has an interest that is materially and directly adverse to the interest of the CITY other than the vendor/customer relationship existing pursuant to this Contract.
- 14.5 CONTRACTOR acknowledges that from time to time CITY releases Request for Proposals or other solicitations. CONTRACTOR agrees that to the best of the CONTRACTOR’s knowledge, including constructive knowledge, in the event it chooses

to submit a proposal in response to any of CITY's solicitations, it will notify CITY of said submittal, in writing, in accordance with the notice provisions set forth in Article VIII, Notice.

- 14.6 In the event that CONTRACTOR is involved in any other project or engagement with the CITY, CONTRACTOR shall confirm, in writing, that such work does not jeopardize CONTRACTOR's independence in performing the work specified in this Contract.
- 14.7 CONTRACTOR warrants and certifies, and this contract is made in reliance thereon that it has tendered to CITY an accurate Litigation Disclosure Statement.

ARTICLE XV **AMENDMENTS**

- 15.1 Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both CITY and CONTRACTOR without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefor.
- 15.2 The parties hereto understand and agree that any request(s) by the CITY for CONTRACTOR to provide contingent additional services pursuant to Article III shall not constitute an amendment to the provisions of this Contract, and is subject to and contingent upon appropriation of funding therefor.
- 15.3 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 Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

ARTICLE XVI **COMPLIANCE**

- 16.1 Independence. In the performance of these audit services, CONTRACTOR must comply with the independence standards and all other standards promulgated by the American Institute of Certified Public Accountants, General Accounting Office and any other standards promulgated by any other authoritative body, as applicable to the performance of independent audit services. CONTRACTOR is also required to comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to the Single Audit Act Amendments of 1996, Uniform Guidance, UGMS, and TxGMS to

include its State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio Charter.

In providing attest services, CONTRACTOR is required by law and professional standards to maintain independence from CITY. CONTRACTOR takes this mandate very seriously and thus guard against impermissible relationships which may impair the very independence which CITY and the users of CONTRACTOR's report require. As such, CITY should not place upon CONTRACTOR special confidence that in the performance of attest services CONTRACTOR will act solely in CITY's interest. Therefore, CITY acknowledges and agrees that CONTRACTOR is not in a fiduciary relationship with CITY and CONTRACTOR has no fiduciary responsibilities to CITY in the performance of services described herein.

- 16.2 Mandatory Partner Rotation. To maintain Auditor independence, objectivity and credibility, the CITY has adopted a policy of mandatory rotation of audit partners (from the prime contractor) every five years and CONTRACTOR agrees to comply with this policy. If applicable, mandatory rotation policy will carry over from any prior CITY Contract and will also apply to future RFPs for Independent External Audit Services.
- 16.3 Non-Discrimination. As a party to this contract, CONTRACTOR understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

ARTICLE XVII

THIRD PARTY SERVICE PROVIDERS

- 17.1 CONTRACTOR may use third parties to provide administrative and operational support to CONTRACTOR's business operations. All of these third-party service providers are subject to confidentiality obligations to protect the confidentiality of client data.
- 17.2 CONTRACTOR may from time to time utilize third-party service providers, including but not limited to domestic software processors or legal counsel, or disclose confidential information about CITY to third-party service providers in serving CITY's account. CONTRACTOR maintains, however, internal policies, procedures, and safeguards to protect the confidentiality and security of CITY information. In addition, CONTRACTOR will secure confidentiality agreements with all service providers to maintain the confidentiality of CITY information. If CONTRACTOR is unable to secure an appropriate confidentiality agreement, CITY will be asked to consent prior to CONTRACTOR sharing confidential information with the third-party service provider.

ARTICLE XVIII
NONWAIVER OF PERFORMANCE

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

ARTICLE XIX
LICENSES/CERTIFICATIONS

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

ARTICLE XX
LAW APPLICABLE & LEGAL FEES

- 20.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES THEREOF, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 20.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between CITY and CONTRACTOR arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 20.3 Unless provided otherwise in this Contract, the Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

ARTICLE XXI
LEGAL AUTHORITY

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

ARTICLE XXII
PARTIES BOUND

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

ARTICLE XXIII
CAPTIONS

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

ARTICLE XXIV
GENDER

Words of any gender used in this Contract shall be held and construed to include any other gender.

ARTICLE XXV
SEVERABILITY

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

ARTICLE XXVI
STATE PROHIBITIONS ON CONTRACTS

- 26.1 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.

- 26.2 "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.

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

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

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

- 26.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. In accordance with SB 13, effective September 1, 2021, Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

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

pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

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

- 26.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. In accordance with SB 19, effective September 1, 2021, Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

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

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

ARTICLE XXVII

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

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. CONTRACTOR hereby certifies that it is not identified on such a list and that it will notify CITY should it be placed on such a list while under contract with CITY. CITY hereby relies on CONTRACTOR's certification. If found to be false, or if CONTRACTOR is identified on such list during the course of its contract with CITY, CITY may terminate this Contract for material breach.

ARTICLE XXVIII
PROHIBITED CONTRIBUTIONS

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

ARTICLE XXIX
EXECUTION IN COUNTERPART

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

ARTICLE XXX
AUTOPEN OR ELECTRONIC SIGNATURE

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

ARTICLE XXXI
INCORPORATION OF EXHIBITS

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

- Exhibit A** Annual Engagement Letters for the respective fiscal year
- Exhibit B** CITY's RFP No. 22-002; RFx 6100014751, including any addendums, exhibits, and attachments
- Exhibit C** BKD, LLP's City of San Antonio Subcontractor/Supplier Utilization Plan submitted in response to RFP No. 22-002; RFx 6100014751
- Exhibit D** BKD, LLP's Proposal submitted in response to RFP No. 22-002; RFx 6100014751
- Exhibit E** Contractor's Letter dated May 25, 2022, whereby Contractor certifies and warrants BKD, LLP does not own any company vehicles and will not be using company vehicles throughout the duration of this Contract.
- Exhibit F** Notice of BKD + DHG Merger Effective June 1, 2022

ARTICLE XXXII
ENTIRE AGREEMENT

It is acknowledged and understood by the parties hereto that this Contract, including the respective Annual Engagement Letter for each fiscal year executed pursuant to it, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. It is also acknowledged and understood by the parties hereto that with the execution of this Contract, the authorizing ordinance, the Annual Engagement Letters and any Exhibits to the Contracts constitute the final and entire agreement between CITY and CONTRACTOR and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by CITY and CONTRACTOR and that engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services. In the event of a conflict or inconsistency between specific terms of this Contract and the similar provisions of any of the engagement letters, ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XV. Amendments.

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

CITY OF SAN ANTONIO

FORVIS, LLP

(Signature)

Printed Name: **Ben Gorzell, Jr., CPA**

Title: **Chief Finance Officer**

Date: _____

Approved as to Form:

Assistant City Attorney

(Signature)

Printed Name: **Amanda E. Eaves, CPA**

Title: **Partner**

Date: _____