

STATE OF TEXAS

COUNTY OF BEXAR

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**PROFESSIONAL SERVICES  
AGREEMENT BETWEEN THE  
SAN ANTONIO ECONOMIC  
DEVELOPMENT  
CORPORATION AND  
VELOCITYTX FOR SAMMI  
INITIATIVE ADMINISTRATION**

This Professional Services Agreement for the SAMMI Initiative Administration (this “Agreement”) is entered into by and between the San Antonio Economic Development Corporation (“SAEDC”), a nonprofit corporation formed under the Act, and VelocityTX a nonprofit subsidiary of the Texas Research and Technology Foundation (“TRTF”), a 501(c)(3) nonprofit economic development organization (hereinafter referred to as “VelocityTX” and “Contractor”) (SAEDC and VelocityTX may be referred to collectively as the “Parties” and sometimes individually each as a “Party”).

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

**RECITALS**

**WHEREAS** SAEDC is a Type B corporation created by the City of San Antonio (the “City”) pursuant to the authority of the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code, starting at section 501.001 et seq (the “Act”), and it has been determined that the Act authorizes the SAEDC Board to approve the use of funds to promote new or expanded business development and the creation and/or retention of jobs in the City; and

**WHEREAS**, in 2017, the City formed a Military Life Science Research Working Group which includes TRTF along with local military medical research partners, UT Health San Antonio (UTHSCSA), UT San Antonio (UTSA), Southwest Research Institute (SWRI), Texas Biomedical Research Institute (TX BioMed), 59<sup>th</sup> Medical Wing, Army Institute of Surgical Research, Naval Medical Research Unit San Antonio, San Antonio Economic Development Foundation (now greater:SATX), and private industry. The Working Group focuses on how the community can help the military meet medical mission requirements while leveraging such research activities for local commercialization opportunities that will create jobs and investment; and

**WHEREAS**, in 2018, the City commissioned a study resulting in the development of the *SA Military Life Science Commercialization Action Plan* (“the **Action Plan**”). The Action Plan recommended the establishment of a San Antonio Military Medical Innovation initiative (“ the SAMMI Initiative”) with a full-time director (“the **SAMMI Director**”) to help implement the Action Plan. The City then asked SAEDC to establish the SAMMI Director position and begin implementation of the Action Plan which resulted in the development of the *San Antonio Military Life Science Commercialization Charter* (“the **Charter**”); and

**WHEREAS**, TRTF and VelocityTX are non-profit 501(c)(3) economic development organizations which fund, support and develop innovative ventures helping build the City’s bioscience and technology economy. TRTF also supports the growth and development of the bioscience sector by enhancing and leveraging the capabilities of existing assets including military medical research, supplying early-stage investment capital and commercialization expertise, identifying gaps in the bioscience ecosystem, and developing responsive solutions; and

**WHEREAS**, in 2017, TRTF established VelocityTX as its non-profit innovation subsidiary to help support the long-term community goal of promoting research and commercialization, strengthening, and supporting our military medical missions, and promoting entrepreneurial development in the City; and

**WHEREAS** TRTF and VelocityTX have executed Memorandums of Understanding (MOUs) with TX BioMed, SWRI, UTSA and UT Health San Antonio outlining how the parties can partner to promote and enhance San Antonio's bioscience research capabilities. These entities are members and supporters of the Military Life Science Working Group and engaged in collaboration/R&D initiatives with our military medical community. TX BioMed, SWRI and BioBridge also provided annual funding through September 30, 2022 to the SAEDC to support the SAMMI initiative; and

**WHEREAS**, in 2019, the City provided funding to SAEDC to fund the SAMMI position for three years, and the SAEDC then hired the SAMMI Director effective October 1, 2019 through September 30, 2022. The SAMMI Director focuses on partnering with the local military medical missions to help develop innovative technologies and leveraging collaboration with military medicine to create local commercialization opportunities; and

**WHEREAS**, SAEDC desires to contract with VelocityTX to provide the services described herein, which the intent that such services will fulfill the same function as the SAMMI Director position has fulfilled prior to the date of this Agreement; and

**NOW, THEREFORE**, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

#### **I. TERM**

- 1.1 This Agreement shall be upon approval by City Council, as required pursuant to the SAEDC's Bylaws, to September 30, 2023. If both Parties agree, in their sole discretion, the Agreement may be extended for two (2) consecutive one (1) year terms (which may include modified services as agreed to by both Parties) to September 30, 2024 and September 30, 2025 respectively, as evidenced in writing and executed by both SAEDC and VelocityTX.

#### **II. GENERAL RESPONSIBILITIES OF CONTRACTOR**

- 2.1 By execution of this Agreement, Contractor hereby accepts full responsibility for the performance of all services and activities described in this Agreement.
- 2.2 Contractor is authorized and shall, pursuant to the Director of Economic Development's ("Director") request, publicly acknowledge that the City and SAEDC have been supportive of the objectives as described in the Scope of Services and that SAEDC has contributed to the cause of realizing such objectives.

#### **III. SCOPE OF SERVICES**

- 3.1 Contractor agrees to provide the services described in this Article III and the Attachment A entitled "Scope of Services" (the "Scope of Services") in exchange for the compensation described in Article IV, entitled "Compensation." The services to be provided by the

Contractor and its subcontractors, if any, shall be performed in a professional manner in accordance and consistent with the scopes of work, methodologies, work plans, and costs described by SAEDC and proposed by the Contractor in the following documents:

#### Attachment A – Scope of Services

- 3.2 SAEDC shall have authority to inspect the Contractor's delivery of services hereunder to ensure compliance with this Agreement and ensure proper usage of SAEDC Funds as prescribed by the Scope of Services. All work performed by the Contractor and its subcontractors, if any, hereunder shall be performed to the satisfaction of the Director. The determination made by the Director shall be final, binding, and conclusive on all Parties. SAEDC shall be under no obligation to pay for any work performed by the Contractor and its subcontractors, if any, which is not satisfactory to the Director. SAEDC shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should the Contractor's work or work of its subcontractors, if any, not be satisfactory to the Director; however, the SAEDC shall have no obligation to terminate and may withhold payment for any unsatisfactory work, should the City elect not to terminate.
- 3.3 Contractor agrees to abide by the City's current Ethics Code or any amendment or revisions thereto. Contractor will establish safeguards to prohibit anyone whose position is funded or partially funded by this Agreement from using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family business or other ties. SAEDC, may, at its option, cancel this Agreement for any violation of this section.
- 3.4 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the City Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 3.5 Pursuant to Section 3.4 above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. GRANTEE further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

#### IV. COMPENSATION

- 4.1 In consideration of the Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Agreement, SAEDC agrees to pay the Contractor a total amount not to exceed ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$175,000.00), which shall be disbursed according to the following:
  - 4.1.1 \$75,000 upon execution of the contract.
  - 4.1.2 \$50,000 upon submission and approval of the second quarter report

- 4.1.3 \$50,000 upon submission and approval of the year-end report
- 4.2 Should the Term be extended for the first one (1) year extension, SAEDC agrees to pay the Contractor a total amount not to exceed ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$125,000), which shall be disbursed according to the following:
  - 4.2.1 \$50,000 upon execution of the contract.
  - 4.2.2 \$50,000 upon submission and approval of the second quarter report
  - 4.2.3 \$25,000 upon submission and approval of the year-end report
- 4.3 Should the Term be extended for the second one (1) year extension, SAEDC agrees to pay the Contractor a total amount not to exceed SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$75,000), which shall be disbursed according to the following:
  - 4.3.1 \$25,000 upon execution of the contract.
  - 4.3.2 \$25,000 upon submission and approval of the second quarter report
  - 4.3.3 \$25,000 upon submission and approval of the year-end report
- 4.4 Invoices shall be submitted to: San Antonio Economic Development Corporation (SAEDC), copying City of San Antonio Economic Development Department, 100 W. Houston St., Suite 1800, San Antonio, Texas 78205. Invoices should include remittance or wire instructions. SAEDC shall pay such invoices by telegraphic bank transfer net of all duties and bank charges to an account specified by Contractor.
- 4.5 Contractor acknowledges that such fixed fee shall be sufficient for full and final compensation for all services to be performed pursuant to or associated with the Scope of Services and agrees that no additional fees or expenses of Contractor shall be charged by Contractor nor be payable by SAEDC or City. The Parties agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1 above. Total payments to Contractor for the original contract term cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all Parties, subject to Article XV. Amendments.
- 4.6 Final acceptance of work products and services require written approval by SAEDC. The approval official shall be the Director. Neither SAEDC nor City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.
- 4.7 For any sum of funds paid by SAEDC later determined to have not been spent in accordance with the terms of the Agreement, SAEDC reserves the right to request return of said funds to SAEDC, which shall be returned within ten (10) working days, or shall be proportionately held from future disbursement, as decided by SAEDC. The Parties acknowledge the SAEDC commitment of funding for the Scope of Services under this Agreement, as described in Exhibit A. While it is expected that each outcome outlined in Exhibit A is met upon program completion, SAEDC in coordination with City staff will monitor attainment toward outcomes. Should outcomes not be achieved, Contractor will submit a Corrective Action Plan to City staff within 30 days of notification, subject to approval. The Corrective Action Plan will state the cause for the deficiency and propose a plan with a specific timeline on how their outputs and goals will be met. If the Corrective Action Plan is not met in accordance with the timeline approved, SAEDC reserves the right to reduce the following quarter's disbursement in an amount proportionate to the deficiency and Contractor risks termination or non-renewal of contract.
- 4.8 Costs claimed under this Contract may not be claimed under a City of San Antonio agreement,

or contract or grant from another agency, organization, business entity or governmental entity.

## V. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of SAEDC; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.
- 5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, SAEDC has the right to use all such writings, documents and information as SAEDC desires, without restriction.
- 5.3 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Contractor, including but not limited to writings, documents and information used by Contractor in the course of delivering the services hereunder, and any know-how, methodologies, or processes used by the Contractor to provide the services or protect deliverables to SAEDC, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole the exclusive property of Contractor or supplies.
- 5.4 Contractor shall maintain as confidential and not disclose to others without SAEDC's prior written consent, all information obtained from SAEDC, not previously known to Contractor in the public domain.

## VI. RECORDS RETENTION

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately, and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement ("documents"), and shall make such materials available to the SAEDC and/or City at their respective offices, at all reasonable times and as often as SAEDC may deem necessary during the Agreement period, including any extension or renewal, and the record retention period established, for purposes of audit, inspection, examination, and making excerpts or copies of same by SAEDC 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 four (4) years ("retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that SAEDC and City shall have access to any and all such documents at any and all times, as deemed necessary by SAEDC during said retention period. SAEDC may, at its election, require Contractor to return said documents to SAEDC and/or City prior to or at the conclusion of said retention at Contractor's expense.
- 6.3 Contractor shall notify SAEDC, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Contractor understands and agrees that City will process and handle all such requests.

## VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions of this Agreement.
- 7.2 Termination Without Cause. This Agreement may be terminated by the SAEDC upon fifteen (15) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. In the event of Termination Without Cause, shall be compensated for any work it has already done pursuant to this Agreement.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, SAEDC may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
  - 7.3.2 Any material breach of the terms of this Agreement, as determined solely by SAEDC.
- 7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section below, same shall be considered an event of default. SAEDC shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such thirty-day cure period, SAEDC shall have the right, without further notice, to terminate this Agreement in whole or in part as SAEDC deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. SAEDC shall also have the right to offset the cost of said new Agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of SAEDC to mitigate its losses to the extent required by law.
- 7.4.1 Failing to perform or failing to comply with any covenant or provision required under this Agreement; or
  - 7.4.2 Performing unsatisfactorily.
  - 7.4.3 Bankruptcy or selling substantially all of company's assets.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties required under this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Contractor shall return all unearned payments to SAEDC within 30 calendar days of such termination. Payments shall be deemed unearned if they are for work not accepted by SAEDC under Sections 3.2 and 4.3.
- 7.6.1 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to SAEDC or to such person(s) or firm(s) as the SAEDC may designate, at no additional cost to SAEDC, 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 SAEDC, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by SAEDC 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.

- 7.6.2 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to SAEDC its claims, in detail, for the monies owed by SAEDC for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said 45 calendar days shall negate any liability on the part of SAEDC 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 Agreement.
- 7.6.3 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.
- 7.6.4 Termination not sole remedy. In no event shall SAEDC's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of SAEDC's or City's remedies, nor shall such termination limit, in any way, at law or at equity, SAEDC's or City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

## VIII. NOTICE

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

If intended for SAEDC, to:

SAEDC  
Attn: Director  
Department of Economic Development  
Box 839966  
San Antonio, Texas 78283-3966  
Email: [alondra.ramirez@sanantonio.gov](mailto:alondra.ramirez@sanantonio.gov)

If intended for Contractor, to:

VelocityTX  
Attn: David Fonseca  
1305 E Houston St.  
San Antonio, Texas 78205  
Email: [david@velocitytx.org](mailto:david@velocitytx.org)

## IX. NONDISCRIMINATION

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

## X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Economic Development Department and SAEDC, which shall be clearly labeled "*Professional Services Agreement for the SAMMI Initiative Administration*" 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. SAEDC will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to SAEDC. SAEDC shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Economic Development Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 SAEDC reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent.

10.3 A Contractor's financial integrity is of interest to the SAEDC; 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 Agreement, 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises Operations b. Products/Completed operations c. Personal/Advertising Injury d. Contractual Liability e. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence



5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
*6. Cyber Liability	\$1,000,000 per claim/ and \$2M general aggregate
<i>*If applicable to the scope of service</i>	

10.4 Contractor agrees to provide insurance for all subcontractors providing services under this Agreement by adding an endorsement on their insurance policy naming such subcontractors as additional insureds on Contractor's insurance policy to the full extent needed to cover the subcontractors for the types and amounts of insurance set out in Article 10.3 above. Contractor shall provide SAEDC with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by SAEDC, SAEDC shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance SAEDC at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

If intended for SAEDC, to:

SAEDC c/o City of San Antonio  
Attn: Economic Development Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name SAEDC, the City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with SAEDC, 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 SAEDC or City of San Antonio where the SAEDC and 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 SAEDC and the City.

- Provide advance written notice directly to SAEDC of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to SAEDC. SAEDC shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies SAEDC may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, SAEDC 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.
- 10.9 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 Agreement.
- 10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAEDC or the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of SAEDC or the City shall be limited to insurance coverage provided.
- 10.12 Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

## **XI. INDEMNIFICATION**

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

**JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 11.2 The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 11.3 CONTRACTOR shall advise SAEDC in writing within 24 hours of any claim or demand against the SAEDC, CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.
- 11.4 Defense Counsel - SAEDC 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 SAEDC, unless such right is expressly waived by SAEDC in writing. Contractor shall retain SAEDC approved defense counsel within seven (7) business days of SAEDC's written notice that SAEDC is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, SAEDC shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by SAEDC. SAEDC shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.
- 12.2 The use of any subcontractor(s) requires the prior written approval of Director.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the SAEDC, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. Neither SAEDC or City shall be, in any event, obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.
- 12.4 Except as otherwise stated, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of Director. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee,

transferee or subcontractor.

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

### **XIII. INDEPENDENT CONTRACTOR**

- 13.1 Contractor covenants and agrees that he or she is an independent Contractor and not an officer, agent, servant or employee of SAEDC; 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 Contractors; that the doctrine of respondent superior shall not apply as between SAEDC and Contractor, its officers, agents, employees, contractors, subcontractors and Contractors, and nothing shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between SAEDC and Contractor. The Parties understand and agree that the SAEDC shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the SAEDC.

### **XIV. AMENDMENTS**

- 14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both SAEDC and Contractor.

### **XV. SEVERABILITY**

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

### **XVI. STANDARD OF SERVICES**

- 16.1 Contractor shall provide services in a professional and workman-like manner, consistent with the highest standards of the industry.
- 16.2 Contractor shall use commercially reasonable efforts to advise San Antonio of any legislation,

rule, regulation or other law (including but not limited to any customs, tax, trade, intellectual property or tariff law) in the Territory which has or may have a material effect on any provision of this Agreement.

## **XVII. STATE PROHIBITIONS ON CERTAIN CONTRACTS**

17.1 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.

17.2 "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.

17.3 Prohibition on Contracts with Companies Boycotting Israel.

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

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

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

17.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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

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

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

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

Texas Government Code §2274 provides that a governmental entity may not enter into a contract

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

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

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

#### **XVIII. NONWAIVER OF PERFORMANCE**

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

#### **XIX. LAW APPLICABLE**

19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

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

#### **XX. CONTRACTOR'S REPRESENTATIONS, WARRANTIES, AND COVENANTS**

20.1 Contractor, its employees, agents and subcontractors will hold all necessary licenses and certificates required by federal, state, and local rules and regulations and Contractor shall comply with applicable laws, ordinances, rules, regulations, and orders in the performance of the services hereunder.

- 20.2 The services hereunder will be performed using that degree of care and skill customarily provided by an experienced professional or professional organization providing similar services in the area during the same time period.
- 20.3 Contractor shall take all necessary precautions to prevent injury or loss to persons or property while performing the services hereunder.
- 20.4 Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, transportation and other facilities and services necessary for proper execution and completion of the services hereunder
- 20.5 The Compensation shall include all applicable taxes.
- 20.6 Contractor operates in accordance with and complies with the Immigration Reform and Control Act of 1986 ("IRCA"), and all other citizenship and immigration laws and regulations. Contractor also complies with all other state and federal employment laws. Specifically, Contractor promises to ensure that all its employees (i) are legally authorized to work in the United States pursuant to all applicable immigration laws, child labor laws, and any other applicable labor or employment law and (ii) have validated identity and authorization-to-work documents pursuant to U.S. Immigration and Naturalization laws. Contractor promises to maintain Employment Eligibility Verification Forms ("I-9's") on all its employees. Additionally, Contractor agrees to provide evidence of compliance with all obligations imposed by this paragraph 4.6, at HPARC's reasonable request.

## **XXI. LEGAL AUTHORITY**

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

## **XXII. PARTIES BOUND**

The effectiveness of this Agreement is conditional and subject to approval by City Council, as required pursuant to the SAEDC's Bylaws. Upon approval by City Council authorizing this Agreement and execution by both parties, this Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for.

## **XXIII. CAPTIONS**

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

## **XXIV. INCORPORATION OF EXHIBITS**

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

Attachment A. Scope of Services

## **XXV. ENTIRE AGREEMENT**

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

**SAN ANTONIO ECONOMIC  
DEVELOPMENT CORPORATION**

**VELOCITYTX**

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Alejandra Lopez  
Executive Director

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David Fonseca  
CEO

Approved as to Form:

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Assistant City Attorney



## ATTACHMENT A: SCOPE OF SERVICES

### ACTION PLAN

1. VelocityTX will continue the implementation portions of the *S.A. Military Life Science Commercialization Action Plan* and activities of the SAMMI Office/Director through the establishment of the new Full-Time Employee position located at the VelocityTX Facility. This co-location with VelocityTX's other business activities will provide the SAMMI Director with increased opportunities for collaboration and access to community partners and startup companies/entrepreneurs interested in leveraging military medical research.
2. VelocityTX will use the SAEDC grant funds to expand on its proven Innovation Model of Connect, Support, and Fund. This model focuses on serving startup companies and entrepreneurs with the ultimate goal of job creation in the city. Such programs and services include, but are not limited to:
  - a. Connect:
    - i. VelocityTX will incorporate military medical assets into an interactive database (Asset Mapping Initiative) VelocityTX has developed for all bioscience research capabilities among public and private entities in San Antonio. The initial integration of military medical assets into the interactive database will be completed by the end 2023 and will incorporate specific San Antonio military medical research projects and needs that have potential for commercialization.
    - ii. VelocityTX will consider pursuing formally establishing a San Antonio Military Life Science Alliance as recommended in Section 2 of the Military Life Science Commercialization Charter adopted by the SAEDC Board. VelocityTX will convene and work with the previously established Military Life Science Working Group to help form the Alliance and provide staff support to the Working Group and the Alliance upon formation. The Military Life Science Working Group or the Alliance will meet at least 2 times per year for the length of this agreement.
    - iii. Attend the annual Military Health System Research Symposium (MHSRS), BIO and other biomedically-focused meetings to promote San Antonio and seek potential development partners.
    - iv. Host regular Office Hours, symposiums, and other gatherings at VelocityTX to allow military medical personnel to meet with potential private-sector partners.
    - v. Create a meeting space at VelocityTX for military medical personnel to meet with potential partners/collaborators.
    - vi. Organize an annual Military Medical Industry Day (MMID) event on behalf of the City to bring together military medical personnel and the private sector.
    - vii. Networking with companies, sources of capital, and research institutions in the Austin, DFW, and Houston metros for military medicine commercialization. SAMMI / VelocityTX will aim to be the first point of contact for military medicine / industry collaboration statewide.
  - b. Support

- i. VelocityTX will offer accelerator/incubator space and other startup technical assistance/services to companies identified by SAMMI as viable candidates for commercializing products/technologies to support military medical requirements.
    - ii. VelocityTX will provide technical assistance, mentoring, financing (e.g., the Alamo Angels), networking, collaboration, events, consulting, accounting, and access to the CEO roundtable.
  - c. Fund
    - i. VelocityTX will provide opportunities for companies identified by SAMMI to pitch to Alamo Angels and other partner angel networks.
    - ii. VelocityTX will grant access to Small Business Innovation Research (SBIR) technical expertise through nationally recognized Contractors.
- 3. VelocityTX will pursue the establishment of Partnership Intermediary Agreements (PIAs) with the Defense Health Agency, Army MRDC, the 59<sup>th</sup> Medical Wing, the Army Institute of Surgical Research, the Naval Medical Research Unit San Antonio, the Uniformed Services University, and other entities as appropriate. Through the PIAs, VelocityTX will provide programs, services, and technical assistance that help expand the transfer of military medical technology between federal laboratories and businesses and universities and create commercialization opportunities in the City.

## **REPORTING AND METRICS**

Quarterly reports will be required within 30 days upon end of the quarter. The reports should address the following annual performance metrics:

- 7 companies presented to military medical groups as potential partners.
- 5 informational symposiums and other meetings hosted by VelocityTX aimed at increasing interaction between the private sector and military medical groups.
- 2 partnerships established between military medical groups and the private sector.
- 2 new companies created and located in the City, not specific to VelocityTX location, with specific support from VelocityTX.
- 2 non-San Antonio companies identified as viable prospects for establishment of a local presence in the City, not specific to VelocityTX location, with a demonstrated outreach and recruitment efforts made by VelocityTX.

Note: SAEDC reserves the right to adjust any deliverables listed above, as determined by SAEDC or other relevant stakeholders.

## **EXPECTED OUTCOMES**

- 1. Contribute to the growth of the City's economy by:
  - a. Fostering collaboration between the military medical community and private-sector entities.
  - b. Raising awareness beyond the City of opportunities for partnerships with local stakeholders (military medical, academic, not-for-profit and commercial).
- 2. Identifying and encouraging companies outside the City to establish a presence in the City so that they may more readily interact with our local experts and leverage local capabilities.
  - a. Facilitate the development and commercialization of products and services required by military medical personnel by:
    - i. Seeking licensees for Department of Defense intellectual property with potential companies and entrepreneurs for commercialization.

- ii. Introducing companies and entrepreneurs developing relevant medical products/services to appropriate Subject Matter Experts (SMEs) in the military.