

AN ORDINANCE

2021-04-29-0291

APPROVING A FINANCIAL ADVISOR SERVICES CONTRACT WITH HILLTOP SECURITIES INC., TO PROVIDE FINANCIAL ADVISOR SERVICES IN CONNECTION WITH THE CITY'S FINANCINGS FOR A TERM BEGINNING MAY 1, 2021 AND ENDING APRIL 30, 2024, WITH THE OPTION TO EXTEND FOR ONE (1) ADDITIONAL TWO (2) YEAR TERM.

* * * * *

WHEREAS, a Request for Proposal ("RFP"), soliciting proposals for the provision of Financial Advisor services to the City, was released on October 26, 2020; and

WHEREAS, on December 14, 2020, seven (7) firms submitted proposals for provision of Financial Advisor services, which were received by the City, with one (1) proposal deemed non-responsive, leaving a total of six (6) proposals that were evaluated by an evaluation committee; and

WHEREAS, the evaluation involved, among other inquiries, assessment of the services to be provided, and any related fees for such services; and

WHEREAS, in addition to evaluating the proposals, three of the firms submitting responsive proposals were interviewed by the evaluation committee, in order to address any outstanding issues and to gain a clear perspective of each firm's ability to service the City's unique and varied requirements; and

WHEREAS, City Staff has recommended that the City enter into a Financial Advisor Services Contract with Hilltop Securities Inc. ("Hilltop Securities"), with the term of the contract to begin May 1, 2020 and end April 30, 2024, and containing an option to extend for one (1) additional two (2) year term; and

WHEREAS, following discussion and deliberations by the City Council on the matter, the City Council is of the opinion that the recommendation of City Staff should be accepted and followed; **NOW THEREFORE:**

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

SECTION 1. The Financial Advisor Services Contract between the City and Hilltop Securities Inc. ("Hilltop Securities FA Contract"), a true and correct copy of which, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**, is hereby approved. The City Manager or his Designee, or the Chief Financial Officer (CFO) or his Designee, are hereby authorized to execute the Hilltop Securities FA Contract containing the same or substantially the same terms and conditions as those set forth in **Attachment I**.

SECTION 2. The City Manager or the CFO is authorized to execute the Hilltop Securities FA Contract. The City Manager or the CFO is authorized twenty (20) business days from the effective date of this Ordinance within which to execute a contract, substantially according to the terms and conditions set forth in **Attachment I**. If said contract is not executed within said twenty (20) business days, or if the parties cannot agree to terms of such contract that are in substantially the same form as **Attachment I** within such time, then there shall be no authority to execute said contract unless there is subsequent City Council approval.

SECTION 3. The City's Financial Advisors are paid from the proceeds derived from the issuance of obligations and other financings; therefore, there is no impact on the City's operating budget and no financial language is required for this ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 29th day of April, 2021.



M A Y O R

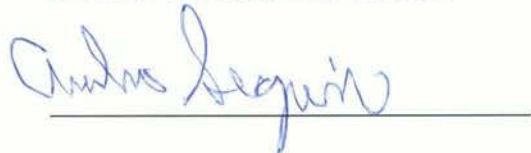
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

April 29, 2021

Item: 25A

File Number: 21-3225

Enactment Number:

2021-04-29-0291

Ordinance approving a contract with Hilltop Securities, Inc. to provide Co-Financial Advisor Services in connection with various City financings for a period to commence May 1, 2021 and terminate April 30, 2024, with an option to extend the contract for one additional two-year period under the same terms and conditions.

Councilmember John Courage made a motion to approve. Councilmember Ana E. Sandoval seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

RKN
04/29/21
Item No. 25 A

A T T A C H M E N T I

CITY OF SAN ANTONIO

Financial Advisor Services Contract

This Financial Advisor Services Contract (hereinafter referred to as “**CONTRACT**”) is made and entered into by and between the City of San Antonio, Texas, (hereinafter referred to as “**CITY**”) a Texas Municipal Corporation, acting by and through its Chief Financial Officer, and **HILLTOP SECURITIES INC.** (hereinafter referred to as “**FIRM**”), a corporation chartered under the laws of the State of Texas, acting by and through its representative, Anne Burger Entekrin, its Regional Managing Director, and provides terms and conditions under which **FIRM** shall serve as Financial Advisor or Co-Financial Advisor to **CITY** in connection with financing capital improvements and other projects through the potential issuance of, among others, the following obligations, hereinafter collectively referred to as “Obligations”.

- General Obligation Bonds
- Combination Tax and Revenue Certificates of Obligation
- Tax Notes
- Airport System Revenue Improvement Bonds
- Passenger Facility Charge and Subordinate Lien Airport System Revenue Bonds
- Customer Facility Charge Revenue Bonds
- Airport Special Facilities Revenue Bonds
- Airport Passenger Facility Charge Revenue Bonds
- Municipal Drainage Utility System Revenue Bonds
- Municipal Facilities Corporation Bonds
- Public Property Finance Contractual Obligations
- Public Facilities Corporation Bonds
- Convention Center Expansion Revenue Bonds
- San Antonio Housing Trust Finance Corporation Bonds
- Conduit Financings including, but not limited to, the following:
 - Economic Development
 - Health Care
 - Higher Education
 - Housing Authority
 - Municipal Facilities Corporation
 - Empowerment Zone Development Corporation
 - Local Development Corporation
 - Other
- Lease-Lease Back Financing
- Pension Obligation Bonds
- Tax Increment Financing
- Lease/Purchase Financing
- Public Improvement Districts
- Special Assessment Districts
- Clean Renewable Energy Bonds
- Other Types of Financings

- Interest Rate Exchange Transactions
- Variable Rate Demand Bonds
- Tax-Exempt Commercial Paper

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROVISIONS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. GENERAL STATEMENT

- 1.1 **CITY**, from time to time, will revise the long-term debt management plan (the “Debt Plan”) and consider the issuance of Obligations. The purpose of this **CONTRACT** is to establish parameters within which **FIRM** is to provide Financial Advisor Services related to reviewing the **CITY’s** debt structure, evaluating financing options and revising the Debt Plan, as well as, provide Financial Advisor Services in connection with the authorization, issuance, sale and delivery of Obligations. “Financial Advisor Services”, as used herein, shall refer to all those services outlined below in Article II.
- 1.2 In the performance of Financial Advisor Services, **FIRM** understands that it may be required to provide said services, as outlined below, along with another entity, and in that capacity act as **CITY’s** Co-Financial Advisor. This, however, in no way limits **FIRM’s** obligation to provide all the services listed herein.
- 1.3 **FIRM** acknowledges and understands that the consideration provided for herein at Article IV constitutes all of the remuneration it is to receive for services rendered. In the event **FIRM** is requested to provide services with another Financial Advisor Service provider, **FIRM** understands it will receive the percentage of the applicable fee as set out in the schedules shown in subsection 4.2.

II. SCOPE OF SERVICES

- 2.1 **FIRM** agrees to provide all Financial Advisor Services normally performed by such advisors, including but not limited to those set out below, and to perform such other duties as may be necessary or advisable:
 - a. Review and analyze debt structures, revenue cash flows and trends, and current and proposed taxing requirements. The analysis will take into account any outstanding obligations which are payable from the net revenues thereof, additional net revenues from any proposed increases and/or additional net revenues as projected by consultant analysis, evaluation and pro forma cash flows. Based on such financial findings, the **FIRM** shall devise and recommend for the **CITY’s** consideration and approval, a plan of financing under terms and conditions most advantageous to the **CITY**, consistent

with a minimum effective interest rate. These plans of finance will include but not be limited to the following:

1. Ad Valorem Debt Management Plan; and
 2. Airport System Finance Plan.
- b. Assist the **CITY** in the selection of financial underwriting firms including the preparation of the request for proposal to provide financial underwriting services, in- depth evaluation of proposals submitted by underwriting firms and oral presentations by such firms (if any); and selection of the financial underwriting pool and financial underwriting syndicates for specific transactions.
- c. Assist the **CITY** in all aspects of both competitive and negotiated transactions including (as applicable), but not limited to the following:
1. Assist in the preparation of an Official Statement or Prospectus containing official data and other information of the nature and to the extent ordinarily required in bidding on obligations, all of which is to be furnished with a sufficient number of copies to permit mailing to prospective bidders, a list of which the **FIRM** and/or underwriters will provide.
 2. Advise the **CITY** of current bond market conditions, forthcoming bond issues and other general information and economic data which might normally be expected to influence interest rates or bidding conditions, so that the date for the sale of any obligations in the open market can be set at a time which is viewed to be most favorable.
 3. Assist the **CITY** with the sale and delivery of bonds and/or certificates, or other debt instruments.
 4. Assist the **CITY** in securing competitive bids for credit enhancement, paying agent/registrars banks, trustee banks, escrow agents, financial printers, and other services rendered from other parties associated with financial transactions.
 5. Arrange for the printing of the offering documents related to the sale of the bonds, certificates, or other debt instruments.
 6. Consult with **CITY** Staff on the matter of bond ratings for the proposed issue and when so instructed, direct the preparation of such information as is required for submission to the bond rating agencies. In the event the City in its unfettered discretion considers it advisable to make a personal presentation of information to the bond rating agencies, the **FIRM** will accompany those representing the **CITY** before such bond rating agencies. Assist the **CITY** in the compilation and preparation of information, as needed, for submission to the municipal bond insurance companies

for consideration to qualify the proposed issue for municipal bond insurance.

7. Assist the **CITY** in planning and coordination of other miscellaneous activities in connection with the issuance of debt as necessary.
 8. Assist the **CITY** in providing responses to bond rating agency annual reviews and special reviews including reviewing draft press releases and rating reports.
 9. Assist the **CITY** in researching credit ratings of other issuers and analyzing credit data as requested by the **CITY**.
- d. The **CITY** retains experienced municipal bond advisory law firms (“Bond Counsel”) to prepare the proceedings and provide counsel with respect to all necessary actions, including, but not limited to the legal issuance and final delivery of the **CITY**’s obligations, issuance of an opinion affirming the legality of the **CITY**’s obligations, and the preparation of legal proceedings for a bond election if required. The **FIRM** shall collaborate with Bond Counsel and shall assist in all the financial advisory aspects involved in the preparation of appropriate legal proceedings and documents.
 - e. If a bond election is required, the **FIRM** will assemble and transmit to Bond Counsel such data as may be required in the preparation of the necessary petitions, orders, resolutions, notices and certificates; and will assist the **CITY** in the expeditious handling thereof.
 - f. The **FIRM** shall advise, inform, and assist the **CITY** in performance of due diligence investigations with respect to financial underwriting firms that the **CITY** may contemplate utilizing in a financing transaction. Such due diligence shall include matters pertaining to the knowledge of, or investigation into a firm’s alleged, accused or convicted financial misconduct, securities violations, Justice Department investigation(s), or other financial distrust.
 - g. Advise and assist the **CITY** in complying with, and preparing continuing disclosure of financial information and operating data pursuant to, S.E.C. Rule 15c2-12.
 - h. Assist the **CITY** with other financial analyses as needed.
- 2.2 Specifically excluded from the financings and issuances for which **FIRM** shall provide services under this **CONTRACT** are those which are already in process under **CITY**’s prior contract with **FIRM**. The financings are as follows:
- a. Witte Museum Financing

III. TERM

- 3.1 This **CONTRACT** shall commence on May 1, 2021, and shall terminate on April 30, 2024, unless extension or earlier termination shall occur pursuant to any of the provisions of this **CONTRACT**.
- 3.2 **CITY** shall have the option to renew this **CONTRACT** for one (1) additional two (2) year period for the services described herein. This option shall be at the **CITY's** sole discretion and such renewal or extension, if exercised, shall be evidenced by passage of an ordinance by **CITY's** City Council.

IV. CONSIDERATION

- 4.1 Subject to subsections 4.2 through 4.6, in consideration for the performance of services provided for in Articles I and II by **FIRM**, and as reimbursement for the expenses, as described herein, which may be incurred and associated therewith by **FIRM**, **CITY** agrees to pay **FIRM** and **FIRM** agrees to accept a cash fee in an amount equal to i) when serving as Co-Financial Advisor fifty percent (50%) of the applicable fee set forth in the schedules below, or ii) when serving as sole Financial Advisor the applicable fee set forth in the schedules below, and in either case, plus reimbursement for expenses incurred by **FIRM** on behalf of **CITY**, at **CITY's** instruction, and not provided for herein. Such fee shall become due and payable simultaneously with delivery of the securities to the purchaser.

4.2 **Tax-Supported Debt Fee Schedule – Per Bond Issuance**

Amount	Gross Fee
Minimum Fee	\$15,000
\$0 to \$15,000,000	\$15,000 plus \$1.10 per \$1,000
\$15,000,001 to \$30,000,000	\$16,500 plus \$0.90 per \$1,000 over \$15,000,000
\$30,000,001 to \$45,000,000	\$30,000 plus \$0.70 per \$1,000 over \$30,000,000
\$45,000,001 and over	\$45,500 plus \$0.50 per \$1,000 over \$45,000,000

* Fees payable to **FIRM** based on higher of par vs. bond proceeds

Revenue Bond Fee Schedule – Per Bond Issuance

Amount	Gross Fee
Minimum Fee	\$22,500
\$0 to \$25,000,000	\$22,500 plus \$0.75 per \$1,000 over \$10,000,000
\$25,000,001 and over	\$30,750 plus \$0.60 per \$1,000 over \$25,000,000

* Fees payable to **FIRM** based on higher of par vs. bond proceeds

- 4.3 Combination new money and refunding general obligation bonds shall be considered as one issue and the fee shall be based on 125% of the fee schedule set forth above.
- 4.4 New-money tax-exempt or taxable certificates of obligation or tax notes sold at the same date as the new money and refunding general obligation bonds shall be considered as a separate

- issue.
- 4.5 Fees for refunding, to include current refunding, forward refundings and SWAP refundings shall be computed at the scheduled set forth above and multiplied by 125%.
 - 4.6 In the event **CITY** effectuates a structured financing or conduit offering, **CITY** shall negotiate with **FIRM** the remuneration due **FIRM** if any, for services **FIRM** specifically provides in connection with the structured financing or conduit offering. Conduit issuers shall include but not be limited to: San Antonio Housing Trust Finance Corporation, Economic Development Corporation, Higher Education Facilities Corporation, Municipal Facilities Corporation, Local Government Corporations, Public Facility Corporations, and such other conduit issuers or structured financings as may arise.
 - 4.7 **CITY** shall not reimburse **FIRM** for expenses related to travel expenses from **FIRM**'s place of business to **CITY**.
 - 4.8 If a bond election is required and subsequently fails, or if after analysis of the possible issuance of Revenue Bonds or Special Tax Bonds, financing is found to not be feasible or practical, no fee shall be due or payable to **FIRM**, except for the reimbursement of certain expenses incurred by **FIRM** on behalf of **CITY**, at **CITY**'s instruction, and not provided for herein.
 - 4.9 **CITY** shall negotiate with **FIRM**, on a case-by-case basis the amount of computer fees and structuring fees to be paid, if any, based on the work performed on any financial transaction and the payment received from the issuance of Obligations. **FIRM** acknowledges and understands, however, that **CITY** shall not pay computer fees for work that is normally performed in the financial analysis of an issuance of Obligations.
 - 4.10 In the event the **CITY** effectuates either an in-substance legal cash defeasance or an in-substance economic defeasance, the **CITY** shall negotiate with **FIRM** the remuneration due **FIRM**, if any, for services **FIRM** specifically provides related to the structuring of such a cash defeasance.
 - 4.11 In the event **CITY** requests **FIRM** to provide additional services not specifically provided for in Articles I and II, **CITY** and **FIRM** shall negotiate a reasonable fee prior to the engagement or performance of any such additional work by **FIRM**. Such agreement is subject to City Council approval, as evidenced by passage of an ordinance. **CITY** reserves the right to utilize or engage another firm to provide such other services not provided for herein, including but not limited to specific financings that are new, unique, or have not yet been taken under consideration by the **CITY**.

V. RECORDS

- 5.1 **FIRM** 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, 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 retention period set forth below, for purposes of inspection, examination, and making excerpts and or copies of same by **CITY** and any of its authorized representatives.

- 5.2 **FIRM** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the **CONTRACT**. If at the end of four (4) years there is litigation involving or concerning this documentation or the services provided hereunder, **FIRM** shall retain the records until the resolution of such litigation. **CITY** may, at its election, require **FIRM** to return said documents to **CITY** at **FIRM**'s expense prior to or at the conclusion of said retention period.
- 5.3 **FIRM** agrees to notify **CITY** immediately if a request is made by a third party for information produced and/or maintained by **FIRM** as a result of the provision of services under this **CONTRACT**. **FIRM** shall immediately forward said request to **CITY** for response.

VI. INSURANCE

- 6.1 Prior to the commencement of any work under this Agreement, **FIRM** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the **CITY**'s Finance Department, which shall be clearly labeled "Financial Advisor Services Contract" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the **CITY**'s Finance Department. No officer or employee, other than the **CITY**'s Risk Manager, shall have authority to waive this requirement.
- 6.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY**'s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.
- 6.3 A **FIRM**'s financial integrity is of interest to the **CITY**; therefore, subject to **FIRM**'s right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **FIRM** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **FIRM**'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. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

- 6.4 **FIRM** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **FIRM** herein, and provide a certificate of insurance and endorsement that names the **FIRM** and the **CITY** as additional insureds. **FIRM** shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by **CITY's** Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by **CITY's** Risk Manager, which shall become a part of the contract for all purposes.
- 6.5 As they apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular

policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **FIRM** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **FIRM** shall pay any costs incurred resulting from said changes.

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

- 6.6 **FIRM** 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** where the **CITY** is an additional insured shown on the policy;
 - Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**; and
 - Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 6.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **FIRM** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **FIRM'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 Agreement.
- 6.8 In addition to any other remedies the **CITY** may have upon **FIRM'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 **FIRM** to stop work hereunder, and/or withhold any payment(s) which become due to **FIRM** hereunder until **FIRM** demonstrates compliance with the requirements hereof.
- 6.9 Nothing herein contained shall be construed as limiting in any way the extent to which **FIRM** may be held responsible for payments of damages to persons or property resulting from **FIRM's** or its subcontractor's performance of the work covered under this Agreement.

- 6.10 It is agreed that **FIRM's** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the **CITY** for liability arising out of operations under this Agreement.
- 6.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 6.12 **FIRM** and any subcontractors are responsible for all damage to their own equipment and/or property.

VII. INDEMNITY

- 7.1 **FIRM** 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 or 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 **FIRM's** activities under this **CONTRACT**, including any acts or omissions of **FIRM**, any agent, officer director, representative, employee, consultant or subcontractor of **FIRM**, 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 THE EVENT FIRM AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 7.2 The provisions of this **INDEMNIFICATION** 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. **FIRM** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **FIRM** known to **FIRM** related to or arising out of **FIRM's** activities under this **CONTRACT**.
- 7.3 **CITY** shall have the right to select or to approve defense counsel to be retained by **FIRM** in fulfilling its obligation hereunder to defend and indemnify **CITY**, unless such right is expressly waived by **CITY** in writing. **FIRM** 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 Agreement. If **FIRM** fails to retain Counsel within such time

period, **CITY** shall have the right to retain defense counsel on its own behalf, and **FIRM** 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.

- 7.4 In any and all claims against any party indemnified hereunder by any employee of **FIRM**, 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 **FIRM** or any subcontractor under worker's compensation or other employee benefit acts.

VIII. OTHER WORK

- 8.1 **FIRM** understands and agrees that any work for or on behalf of **CITY** that may be in progress prior to the execution of this **CONTRACT** shall remain the responsibility of the Financial Advisor Firm or Firms that are working on the transaction, and that that prior responsibility is governed by the terms of that prior relationship. Fees will be paid to the Firms working on the transaction and prior contractual arrangements with such Firms shall be terminated pursuant to the terms of the prior relationship.

Financings or work on potential financings that are already in process and under contract, and are therefore governed by the terms of that prior relationship are as follows:

- a. Witte Museum Financing; and
- b. City Tower Financing

- 8.2 **FIRM** understands that this **CONTRACT** does not include the provision for, and hereby specifically prohibits **FIRM** from, underwriting any **CITY** Obligations, whether sold by competitive or negotiated sale method, for transactions on which **FIRM** provides Financial Advisor Services.

IX. CONFIDENTIALITY

- 9.1 **FIRM** acknowledges that during the term of this **CONTRACT** it may have access to confidential information, and in accordance therewith, agrees to establish a method to secure and maintain the confidentiality of such information.

X. OWNERSHIP OF DOCUMENTS

- 10.1 Any and all writings, documents or information in whatsoever form and character produced by **FIRM** pursuant to the provisions of this **CONTRACT**, is the exclusive property of **CITY**; and no such writing, document, or information shall be the subject of any copyright or proprietary claim by **FIRM**.

10.2 **FIRM** understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, **CITY** has the right to use all such writings, documents and information as **CITY** desires, without restriction.

XI. TERMINATION

11.1 For purposes of this **CONTRACT**, "termination" of this **CONTRACT** shall mean termination by completion of the provision of services stated herein or earlier termination pursuant to any of the provisions hereof.

11.2 **CITY** may terminate this **CONTRACT** in accordance with this clause, in whole or in part, for any of the following:

a. Neglect or failure by **FIRM** to perform or observe any of the material terms, conditions, covenants or guarantees of this **CONTRACT** or of any amendment between **CITY** and **FIRM**; or

b. Violation by **FIRM** of any rule, regulation or law to which **FIRM** is bound or shall be bound while and in performing the services required under this **CONTRACT**.

11.3 Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **FIRM** specifying the effective date of termination and the extent to which performance of work under this **CONTRACT** will be terminated. And upon receipt of any such notice to terminate, all finished or unfinished documents, data, charts, schedules, or other appended documentation to, prepared by or on behalf of **FIRM** under this **CONTRACT**, save and except for preliminary scratch, and sketch documentation, shall at the option of **CITY**, be accessible to the **CITY** as provided in Article V.

11.4 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by **CITY**), **FIRM** shall submit to **CITY** its claim in detail for any moneys owed by **CITY** for services performed under this **CONTRACT**, including for all work performed to the date of notice required hereunder and for any necessary and proper work performed as determined solely by **CITY** in the ensuing thirty day period in order to close out the project, provided however, that such payment does not exceed the maximum amount set out in Article IV.

11.5 Notwithstanding the provisions contained in this Article, either party may terminate this **CONTRACT** by giving the other party thirty (30) days written notice in accordance with Article XXII.

XII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

A. SBEDA Program

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

B. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives (API) to this contract. FIRM hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO’s granting of a waiver, that its full compliance with the following API terms and conditions are necessary to attain satisfactory performance under this Agreement:

Please note that failure to meet the subcontracting API requirements (when applicable) will deem the response non-responsive. To be SBEDA eligible a Prime or Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency AND must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area. The guidelines and steps to be certified by SCTRCA are available at: <https://sctrca.org/get-certified/>

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, FIRM affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), FIRM agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, FIRM affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), FIRM agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

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

awarded and performed by each SBE and M/WBE Subcontractor, and documentation including a description of each SBE and M/WBE Subcontractor's scope of work and confirmation of each SBE and 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.

Subcontractor Diversity: The CITY strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio **Professional Services** industry, as reflected in the CITY'S Centralized Vendor Registration system for the month of October 2020, African-American owned firms represent approximately 4.98% of available subcontractors, Hispanic-American firms represent approximately 10.02%, Asian-American firms represent approximately 0.90%, Native American firms represent approximately 0.09%, and Women-owned firms represent approximately 5.29% of available **Professional Services** subcontractors.

C. Solicitation Response and Contract Requirements and Commitment

FIRM understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

Exception Request - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

D. SBEDA Program Compliance – General Provisions

As **FIRM** acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the **FIRM** SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of **FIRM**'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. **FIRM** voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, **FIRM** further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. **FIRM** shall cooperate fully with the Small Business Office and other CITY departments in their

data collection and monitoring efforts regarding **FIRM's** utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

2. **FIRM** 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 **FIRM** or its subcontractors or suppliers;
3. **FIRM** shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. **FIRM** shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to **FIRM'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 **FIRM** 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 **FIRM** of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. **FIRM** shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the **CITY**, as well as any transfer or change in its ownership or business structure.
6. **FIRM** 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 four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a **FIRM's** Subcontractor / Supplier Utilization Plan, the **FIRM** 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 **FIRM** and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

For more information please see link: <http://www.sanantonio.gov/SBO/Compliance>

E. Violations, Sanctions and Penalties

In addition to the above terms, **FIRM** acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

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

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

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

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the **FIRM** 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, **FIRM** 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. **FIRM'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. **FIRM** shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to **CITY** contracts.

G. Prompt Payment

Upon execution of this contract by **FIRM**, **FIRM** 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 **FIRM** reported subcontract participation is accurate. **FIRM** 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 **FIRM's** noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to **FIRM**, and no new **CITY** contracts shall be issued to the **FIRM** until the **CITY's** audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Definitions

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

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

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

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these certification services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed

by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the Ordinance No. 2016-05-19-0367 Section III.E.6.

City – refers to the City of San Antonio, Texas.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Evaluation Preference – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the

evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Joint Venture Incentives – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

M/WBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

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

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

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

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

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

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

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

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

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

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

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other

Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

Segmented M/WBE Goals – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

SBE Directory – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the SBEDA Program.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

Solicitation Incentives – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.

Suspension – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope

of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

XIII. SUBCONTRACTING

13.1 Any other clause of this **CONTRACT** to the contrary notwithstanding, none of the work or services covered by this **CONTRACT**, shall be subcontracted without the prior written approval of **CITY**, and, unless specific waiver is granted in writing by **CITY**, such subcontracted work shall be subject by its terms to all provisions of this **CONTRACT**. Compliance by all approved subcontractors with this **CONTRACT** shall be the responsibility of **FIRM**.

XIV. NON-ASSIGNABILITY

14.1 **FIRM** shall not assign any interest in this **CONTRACT** to any other party without the prior written consent of **CITY**, and any attempted assignment shall be void. **CITY** expressly reserves the right to disapprove or withhold consent of any assignment. In no event shall such consent, if obtained, relieve **FIRM** from any obligations under this **CONTRACT**.

XV. CONFLICT OF INTEREST

15.1 **FIRM** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its individual officers, employees, and agents are neither officers nor employees of **CITY** or any **CITY** agencies, including but not limited to **CITY**-owned utilities.

15.2 **FIRM** further warrants and certifies that it, its individual officers, employees, and agents do not have a prohibited financial interest as proscribed by the Ethics Code of the **CITY**. An officer or employee has a "**prohibited financial interest**" in a contract with **CITY** or in the sale to the **CITY** of land, materials, supplies, or service, if any of the following individuals or entities is a party to the **CONTRACT**: **CITY** officer or employee; his or her parent, child, or spouse; a business entity in which the officer or employee, or his or her

parent, child or spouse, directly or indirectly, 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 of which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner, or a parent or subsidiary business entity.

XVI. COMPLIANCE

- 16.1 **FIRM** shall comply with all federal, state and local laws, rules and regulations, including but not limited to, all securities rules and regulations applicable to the services required herein.

XVII. INDEPENDENT CONTRACTOR

- 17.1 It is expressly understood and agreed that the **FIRM** provides services as an independent contractor responsible for its respective acts or omissions and that **CITY** shall in no way be responsible therefore. Except as provided herein, neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XVIII. CHANGES AND AMENDMENTS

- 18.1 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 **FIRM**, and subject to approval by the City Council, evidenced by passage of an ordinance.
- 18.2 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.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **FIRM** warrants and certifies that **FIRM**, each of its employees, 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.
- 19.2 **FIRM** acknowledges and understands that **CITY** is relying on the warranty and certification set forth in Section 19.1 above in entering into this **CONTRACT** with **FIRM**.

XX. RESERVED

XXI. ENTIRE AGREEMENT

21.1 This **CONTRACT** together with its authorizing ordinance constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. 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 hereof, and executed by both parties in accordance with Article XVII.

XXII. SEVERABILITY

22.1 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**, 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 apart 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.

XXIII. NOTICES

23.1 For purposes of this **CONTRACT**, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, certified mail, postage prepaid, to the addresses set forth below:

CITY

City of San Antonio
Chief Financial Officer
Attention: Ben Gorzell, Jr.
111 Soledad Street, 5th Floor
San Antonio, Texas 78205

FIRM

Hilltop Securities Inc.
Regional Managing Director
Attention: Ms. Anne Burger Entekrin
70 NE Interstate 410 Loop, Suite 710
San Antonio, Texas 78216

XXIV. LAW APPLICABLE

24.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

24.2 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, County of Bexar, Texas.

XXV. LEGAL AUTHORITY

25.1 The signer of this **CONTRACT** for **FIRM** represents, warrants, assures and guarantees that she or he has full legal authority to execute this **CONTRACT** on behalf of **FIRM** and to bind **FIRM** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. PARTIES BOUND

26.1 This **CONTRACT** shall be binding on and inure to the benefit of the parties hereto and their respective, legal representatives and successors, except as otherwise expressly provided for herein.

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XXVII. CAPTIONS

27.1 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**.

EXECUTED and **AGREED** to as of the dates set forth below.

CITY

CITY SAN ANTONIO, TEXAS

FIRM

HILLTOP SECURITIES INC.

By: _____

Name: Ben Gorzell, Jr.
Title: Chief Financial Officer

Date: April____, 2021

Name: Anne Burger Entekrin
Title: Regional Managing Director

Date: April____, 2021

APPROVED AS TO FORM:

Robert K. Nordhaus
Assistant City Attorney