

STATE OF TEXAS §
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COUNTY OF BEXAR §

**CITY OF SAN ANTONIO
PROFESSIONAL SERVICES
AGREEMENT**

This Professional Services Agreement (Agreement) is entered into between the City of San Antonio (CITY), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (SAMHD) acting by and through its Assistant City Manager or designee, and Susan M. Wolfe and Associates, L.L.C. (CONSULTANT), hereinafter collectively referred to as the Parties.

WHEREAS, the U.S. Department of Health and Human Services’ (HRSA) Healthy Start Initiative’s (Healthy Start) purpose is to engage communities in a national effort to reduce infant mortality where the rates are over one and a half times the national average; and

WHEREAS, the San Antonio Healthy Start Program is one of six sites nationwide that administers Healthy Start; and

WHEREAS, CITY desires CONSULTANT to provide grant evaluation Services for Healthy Start in order to promote the mission of SAMHD’s Healthy Start Program; and

WHEREAS, the CONSULTANT represents that it possesses the knowledge, ability, professional skills, and qualifications to perform this work in an expeditious and economical manner consistent with CITY’s interests:

NOW THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, the parties agree as follows:

DEFINITIONS

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

“CITY” is defined in the preamble of this Agreement and includes its successors and assigns.

“CONSULTANT” is defined in the preamble of this Agreement and is located at this address: 1137 Wishing Well Court, Cedar Hill, TX 75104.

“Director” shall mean the director of CITY’s San Antonio Metropolitan Health District.

“Healthy Start Program” is defined as the U.S. Department of Health and Human Services’ Healthy Start Initiative Grant which provides funding for this Agreement.

I. TERM

1.1 The term of this Agreement shall commence on November 1, 2013 and end on October 31, 2016. Upon agreement of the parties, this Agreement may be renewed for an additional one year term. The Director shall have authority to execute the renewal on behalf of the CITY

without further City Council action, subject to appropriation of funds therefore.

1.2 CONSULTANT further agrees and understands that the City expects to pay all obligations of this Agreement from HRSA Healthy Start Initiative Grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor CONSULTANT will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

II. SCOPE OF SERVICES

2.1 CONSULTANT shall provide the following services, to include:

2.1.1 CONSULTANT shall conduct up to six one-day site visits annually upon request by the SAMHD, through which CONSULTANT will accomplish activities agreed upon in advance and in writing through communication with the SAMHD. Activities selected may include but are not limited to grant writing, strategic planning, client and consumer focus groups, and/or consortia evaluation activities.

2.1.2 CONSULTANT shall conduct annual consultation services to be conducted remotely via electronic exchange of de-identified client health information through the use of a numerical client ID in accordance with current federal and state privacy laws and regulations.

2.1.2.1 Consultation services shall include further development of the San Antonio Healthy Start Local Health System Action Plan (SAHS-LHSAP). This includes further gathering of community action plans in existence with intention to align the SAHS-LHSAP with other community planning activities and priorities related to maternal child health.

2.1.2.2 Consultation services shall include the Perinatal Periods of Risk (PPOR) Study planning and development, community stakeholder group development and collaboration with potential interns.

2.1.2.3 Consultation services shall include assistance with data management, analysis and reporting as well as other needs as agreed upon by CITY and CONSULTANT.

2.1.2.4 Consultation services shall include conducting and analyzing a consortium survey with the Healthy Families Network members/regular attenders and any other relevant stake holders.

2.1.2.5 Consultation services shall include conducting a needs assessment according to the guidelines of the 2013 Healthy Start competitive application guidance.

2.1.2.6 Consultation services shall include the development and annual updating of a San Antonio Healthy Start Sustainability Plan utilizing the HRSA guidance document as it becomes available.

2.1.2.7 CITY shall initiate consultation services by electronic request which specifies the nature of the request. CONSULTANT shall respond with the number of billable hours required for each request and services will be initiated based on agreement of the parties.

2.1.3 CONSULTANT will provide the following annual written reports due to CITY no later than May 15th of each calendar year or otherwise notated below.

2.1.3.1 The LHSAP report shall build on the existing SAHS LHSAP, while including realistic, culturally sensitive and measurable goals for impacting infant mortality on a community level. Report shall include a summary of activities relating to the PPOR Study in context of the broader plan.

2.1.3.2 Provide a Consortium Development Report which includes a SWAT (Strengths/Weaknesses/Opportunities/Threats) analysis of the Healthy Families Network, recommendations for community change and engagement. Quantitative and qualitative analysis of the Community Readiness Assessment tool and Consortuim Survey tool will be included.

2.1.3.3 The PPOR Report shall include detailed information identifying the process and methods used to conduct the study, data analysis results and tables, study limitations and biases discovered/known, and community stakeholder involvement.

2.1.3.4 A journal article shall be presented and submitted for publishing in at least one peer-reviewed journal. The article will focus on the process of community mobilization conducted through the Healthy Families Network activities, PPOR data analysis and any other contributing factors. Contributing authors shall be identified within the potential publication.

2.1.3.5 The Program Evaluation Report shall include all strategic planning activities and consumer and/or staff focus group activities to include qualitative analysis and program recommendations.

2.1.3.6 The San Antonio Healthy Start Evaluation plan shall include all requirements as detailed by the HRSA official guidance document. Due date for this report is April 7, 2014.

2.1.3.7 The Community Needs Assessment report shall include all required elements according to HRSA's official guidance document expected

to be released in the fall of 2013. Due date for this report is at least 15 days prior to the HRSA solicitation due date determined by HRSA.

2.1.4 CONSULTANT will participate with program staff to present at up to three (3) local, state or national conferences related to Maternal-Child Health issues. CONSULTANT will develop conference abstract, required forms and presentation slides in collaboration with the SAMHD.

2.2 Should CONSULTANT subcontract any of the work required by this contract, CONSULTANT shall comply with Article IX of this contract.

2.3 CONSULTANT agrees to provide any and all documentation required by the CITY for inclusion in any report concerning the CITY's Healthy Start Program. All work performed by CONSULTANT hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by CONSULTANT, which is not satisfactory to Director. CITY shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should CONSULTANT's work not be satisfactory to Director; however, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should CITY elect not to terminate.

III. COMPENSATION TO CONSULTANT

3.1 In consideration of CONSULTANT's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Agreement, City agrees to pay CONSULTANT ONE HUNDRED DOLLARS AND NO/100THS per hour, for a total amount not to exceed FIFTY FOUR THOUSAND AND NO/100THS DOLLARS (\$54,000.00) as total compensation, to be paid to CONSULTANT in the manner set forth in Section 3.2.

3.2 CONSULTANT will submit invoices on a monthly basis, but in no event shall CONSULTANT invoice the CITY for more than \$18,000.00 during each year throughout the term of this Agreement without the prior written approval and agreement of the CITY. CITY and CONSULTANT agree that reimbursement for eligible services shall be made within thirty (30) days after the date on which CITY receives an invoice, with appropriate documentation as required by CITY, from CONSULTANT for said services.

3.3 No additional fees or expenses of CONSULTANT shall be charged by CONSULTANT nor be payable by CITY. The parties hereby agree that all compensable expenses of CONSULTANT have been provided for in the total payment to CONSULTANT as specified in section 3.1 and 3.2 above. Total payments to CONSULTANT cannot exceed that amount set forth in section 3.1 and 3.2 above, without prior approval and agreement of all parties evidenced in writing and approved consistent with appropriate City policy.

3.4 It is expressly understood and agreed by the CITY and CONSULTANT that CITY's obligations under this Agreement are contingent upon the actual receipt of adequate

grant funds from the U.S. Department of Health and Human Services' Healthy Start Initiative Grant to meet the CITY's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If CITY does not receive adequate grant funds to pay obligations under this Agreement, then this Agreement shall terminate and neither CONSULTANT nor CITY shall have any further obligations hereunder. CITY will pay CONSULTANT for all work or services provided up to the day of termination, subject to submission of an invoice by CONSULTANT and approval and acceptance of work by CITY.

3.5 Final acceptance of work products and services require written approval by CITY. The approval official shall be Director. Payment will be made to CONSULTANT following written approval of the final work products and services by Director. CITY shall not be obligated or liable under this Agreement to any party, other than CONSULTANT, for the payment of any monies or the provision of any goods or services.

3.6 CONSULTANT agrees to provide any and all documentation required for inclusion in any report concerning the Healthy Start Program. All services required under this Agreement will be performed to CITY's satisfaction, and CITY will not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been approved by CITY. The payment for services provided hereunder will not be paid until required reports, data, and documentation have been received and approved by the CITY.

IV. RECORDS RETENTION

4.1 CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), 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 Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.

4.2 CONSULTANT shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the 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 hereunder, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. CONSULTANT acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. CITY may, at its election, require CONSULTANT to return said documents to CITY prior to or at the conclusion of said retention period.

4.3 The Public Information Act, Government Code Section 552.021, requires the CITY to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained

under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if CONSULTANT receives inquiries regarding documents within its possession pursuant to this Agreement, CONSULTANT shall within twenty-four (24) hours of receiving the requests forward such requests to CITY for disposition. If the requested information is confidential pursuant to state or federal law, the CONSULTANT shall submit to CITY the list of specific statutory authority mandating confidentiality no later than three (3) business days of CONSULTANT's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

V. TERMINATION

5.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article I. Term, or earlier termination pursuant to any of the provisions hereof.

5.2 Termination Without Cause. This Agreement may be terminated by CITY upon 30 calendar days written notice, which notice shall be provided in accordance with the provisions of this Agreement. CITY will pay CONSULTANT for all work or services provided up to the day of termination, subject to submission of an invoice by CONSULTANT and approval and acceptance of work by CITY.

5.3 CITY's Termination For Cause. Upon written notice, which notice shall be provided in accordance with the provisions of this Agreement, CITY may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an event for cause under this Agreement:

5.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

5.4 Defaults With Opportunity for Cure. Should CONSULTANT default in the performance of this Agreement in a manner stated in this section 5.4 below, same shall be considered an event of default. CITY shall deliver written notice of said default specifying such matter(s) in default. CONSULTANT shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If CONSULTANT fails to cure the default within such ten-day cure period, CITY shall have the right, without further notice, to terminate this Agreement in whole or in part as CITY deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against CONSULTANT's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 5.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
- 5.3.2 Bankruptcy or selling substantially all of company's assets;
- 5.3.3 Failing to perform or failing to comply with any covenant herein required;
- 5.3.4 Performing unsatisfactorily;
- 5.3.5 The failure to meet reporting requirements of the Healthy Start Program, as set out and determined by City;
- 5.3.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

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

VI. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

6.1 Any and all writings, documents or information in whatsoever form and character produced by CONSULTANT 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 CONSULTANT.

6.2 CONSULTANT 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.

6.3 Any intellectual property created by CONSULTANT under this agreement, including but not limited to artwork, logos and designs, shall be the property of the CITY as a "work-for-hire." If requested, CONSULTANT shall execute any documents necessary to assign the intellectual property rights to the CITY subsequent to the execution of this agreement.

6.4 CONSULTANT agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

6.5 CONSULTANT agrees to indemnify and hold CITY harmless from the payment of any royalties, damages, losses or expenses including reasonable attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials, methods or other intellectual property used in the project. Further, if CONSULTANT has reason to believe that the design, service, process or product specified is an infringement of the intellectual property rights of a third party, it shall immediately give such information to the CITY.

VII. INSURANCE

7.1 Prior to the commencement of any work under this Agreement, CONSULTANT shall

furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Health Department, which shall be clearly labeled "**Grant Evaluation Consultant**" 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. 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 CITY. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY's Health Department. No officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.

7.2 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 whereupon CITY may incur increased risk.

7.3 CONSULTANT's financial integrity is of interest to CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, 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>
3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Consultants c. Products/completed operations d. Personal Injury e. Contractual Liability f. 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 f. \$100,000
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles 	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

b. Non-owned vehicles c. Hired Vehicles	
5. Professional Liability – Claims made policies are 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.

7.4 CONSULTANT agrees to require, by written contract, that all subcontractor providing goods or services hereunder obtain the same insurance coverages required of CONSULTANT herein, and provide a certificate of insurance and endorsement that name CONSULTANT and CITY as additional insureds. CONSULTANT shall provide 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.

7.5 As they apply to the limits required by CITY, 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). CONSULTANT 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. CONSULTANT shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: San Antonio Metropolitan Health District
P.O. Box 839966
San Antonio, Texas 78283-3966

7.6 CONSULTANT 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 insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers’ compensation and professional liability policies;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where 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.

7.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

7.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

7.11 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 City shall be limited to insurance coverage provided.

7.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

VIII. INDEMNIFICATION

8.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, Consultant or subcontractors of CONSULTANT, and their respective officers, agents employees, directors and

representatives while in the exercise of the rights or performance of the duties under this 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 CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

8.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT 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 CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT 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.

8.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, 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 CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

IX. ASSIGNMENT AND SUBCONTRACTING

9.1 CONSULTANT 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 considered the employees or contractors of CONSULTANT.

9.2 It is CITY's understanding that this Agreement is made in reliance thereon that

CONSULTANT intends to use subcontractors in the performance of this Agreement which shall be approved by CITY prior to the provision of any services by said subcontractor.

9.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of CONSULTANT. CITY shall in no event be obligated to any third party, including any subcontractors of CONSULTANT, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the CITY.

9.4 Except as otherwise stated herein, CONSULTANT 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 consent of the CITY. As a condition of such consent, if such consent is granted, CONSULTANT shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONSULTANT, assignee, transferee or subcontractor.

9.5 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 CONSULTANT assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, CITY may, at its option, cancel this Agreement and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, in accordance with Article V. Termination, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this Agreement, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.

X. INDEPENDENT CONTRACTOR

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

XI. CONFLICT OF INTEREST

11.1 CONSULTANT 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 the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: 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.

11.2 Pursuant to the subsection above, CONSULTANT 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. CONSULTANT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY’s Ethics Code.

XII. AMENDMENTS

12.1 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 CITY and CONSULTANT, and, as necessary, subject to approval by the City Council, as evidenced by passage of an Ordinance.

XIII. SEVERABILITY

13.1 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 hereto 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 herein; it is also the intention of the parties hereto 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.

XIV. LICENSES/CERTIFICATIONS

14.1 CONSULTANT warrants and certifies that CONSULTANT 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.

XV. COMPLIANCE AND MONITORING

15.1 CONSULTANT shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

15.2 CONSULTANT agrees that CITY may carry out reasonable monitoring and evaluation activities, and CONSULTANT shall provide reasonable access to CITY for such activities, so as to ensure compliance by CONSULTANT with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

XVI. ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS

16.1 Prohibited Political Activity. CONSULTANT agrees that no funds provided from or through the CITY shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

16.2 CONSULTANT agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

16.3 The prohibitions set forth in Sections 16.1 and 16.2 above include, but are not limited to, the following:

- a) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
- b) working or directing other personnel to work on any political activity during time paid for with CITY funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
- c) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
- d) using facilities or equipment paid for, in whole or in part with CITY funds for political purposes including physical facilities such as office space, office

equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

16.4 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the CONSULTANT agrees to comply with the following special provisions,

- a) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY or any other public entity; and
- b) The CONSULTANT, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the CITY remains unresolved.

16.5 Unless disclosure is authorized by the CITY, CONSULTANT agrees to maintain in confidence all information pertaining to this Agreement or other information and materials prepared for, provided by, or obtained from CITY including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. CONSULTANT shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, CONSULTANT shall give the Director of SAMHD prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONSULTANT shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with CONSULTANT's employees and sub Consultants prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the CITY's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, CONSULTANT shall return to CITY all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

XVII. NONDISCRIMINATION POLICY

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

17.2 The CONSULTANT shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, CONSULTANT agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. CONSULTANT further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403, as amended, on file in the City Clerk's Office. Additionally, CONSULTANT certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VII of the Civil Rights Act of 1964, as amended;
- b) Section 504 of the Rehabilitation Act of 1973, as amended;
- c) The Age Discrimination Act of 1975, as amended;
- d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
- e) Fair Labor Standards Act of 1938, as amended;
- f) Equal Pay Act of 1963, P.L. 88-38; and
- g) All applicable regulations implementing the above laws.

XVIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this 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. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("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.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. 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 or “Certified” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element 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. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in

accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee (“GSC”) 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 CONTRACTORS or Respondents.

Good Faith Efforts – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response 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., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; 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 consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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 person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), 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.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also 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 minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also 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 this 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 having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

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 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,

and Other Services contracts (e.g., up to 10 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. For purposes of this agreement, this term refers to the CONTRACTOR.

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

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

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 (SAMSAs) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

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 (SAMSAs), 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 S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

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

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the 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 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

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 a Small Business Enterprise and that is 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 Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

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

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR’s Subcontractor / Supplier Utilization Plan for this contract, with an

explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its

Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

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

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

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

1. Suspension of contract;
2. Withholding of funds;

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

XIX. NONWAIVER OF PERFORMANCE

19.1 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 herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the City Council, as described in Article XII. Amendments. No act or omission by a Party shall in any manner impair or prejudice any rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE

20.1 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.

20.2 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.

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

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

XXIII. NOTIFICATION

23.1 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 three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for CITY, to:

Thomas L. Schlenker, M.D., MPH
City of San Antonio
San Antonio Metropolitan Health District
332 W. Commerce
San Antonio, Texas 78204

If intended for CONSULTANT, to:

Susan M. Wolfe and Associates, L.L.C.
Att: Susan M. Wolfe, Ph.D.
1137 Wishing Well Court
Cedar Hill, TX 75104

XXIV. DEBARMENT

24.1 CONSULTANT certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

24.2 CONSULTANT shall provide immediate written notice to CITY, in accordance with Article XXIII. Notice, if, at any time during the term of this contract, including any renewals hereof, CONSULTANT learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXV. ENTIRE AGREEMENT

25.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto 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 hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XII. Amendments.

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

CITY OF SAN ANTONIO

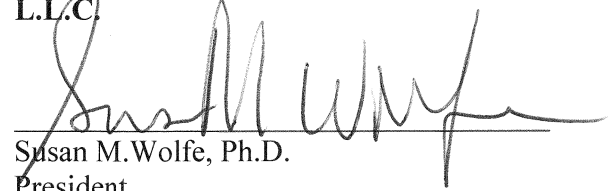
Thomas L. Schlenker M.D., M.P.H.
Director, San Antonio Metropolitan
Health District

Date: _____

Approved as to Form:

City Attorney

**SUSAN M. WOLFE AND ASSOCIATES,
L.L.C.**



Susan M. Wolfe, Ph.D.
President

Date: October 11, 2013