

## **SERVICES AGREEMENT BETWEEN THE ECONOMIC DEVELOPMENT FOUNDATION AND CITY OF SAN ANTONIO**

City Council of CITY OF SAN ANTONIO, TEXAS, a municipal corporation (the “*City*”), has approved City’s engagement of the SAN ANTONIO ECONOMIC DEVELOPMENT FOUNDATION (“*SAEDF*”), a Texas non-profit corporation (together, the “*Parties*”), to provide the “*Services*” (as defined below) set forth in this Services Agreement (“*Agreement*”).

### **RECITALS**

**WHEREAS**, in 2008, as part of an effort to improve corporate retention and recruitment, City formed a Corporate Retention and Recruitment Committee (the “*Committee*”) to develop a plan for the strategic development of San Antonio's economy, with a narrowed focus on developing recommendations for a more robust economic development structure that included a community-wide, long-range vision and strategic plan; and

**WHEREAS**, the Committee’s recommendations were presented to and accepted by City Council on December 10, 2009 and City staff was directed to continue efforts toward implementation of the recommendations, including entering into an agreement with a third-party contractor to provide certain defined services for City, such as business recruiting and retention, image building, and market research functions; and

**WHEREAS**, since 2010, City has contracted with SAEDF as a master convener for San Antonio’s economic and workforce development initiatives; and

**WHEREAS**, SAEDF is a private, non-profit organization that assists businesses relocating or expanding into the San Antonio area and is a respected leader in the highly-competitive industry of corporate recruitment, whose services include direct marketing, site selection, market research assistance, and other economic development activities; and

**WHEREAS**, pursuant to this Agreement, City wishes to continue to engage SAEDF to perform the Services (as defined below), which are expected to contribute to the achievement of the goals stated above.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, City and SAEDF agree as follows:

### **I. TERM**

- 1.1 **Term.** This Agreement shall be effective from January 1, 2021, even though the Parties may have executed it after said date, to December 31, 2021. The Parties may consider an extension of the term of the Agreement for two, one year extensions for services rendered pursuant to this agreement, or for modified services as agreed to by both Parties, to December 31, 2022 and December 31, 2023 respectively, as evidenced in writing and executed by both City and SAEDF.

### **II. SCOPE OF SERVICES**

- 2.1 **Services for Compensation.** SAEDF agrees to provide the services described in the attached

2021 Operations Plan and as listed in Section 2.2 (together the “Services”,) in exchange for the compensation described in Article III. Compensation.

2.1.1 City acknowledges that SAEDF contracts with various entities and organizations unaffiliated with City, and that under those agreements SAEDF may perform services and activities in areas outside of the San Antonio Region (as defined in the attached **Exhibit B**). However, the Parties have agreed that funds provided by City through this Agreement will be used for activities within City limits of City and its extraterritorial jurisdiction.

2.2 Scope of Services. SAEDF shall work to enhance public- and private-sector collaboration towards development and execution of strategies to increase the number and quality of jobs and capital investment in the San Antonio Region in accordance with the 2021 Operations Plan, attached hereto as **Exhibit A**.

2.2.1 In the event that the Parties exercise any extension of the Agreement, as provided for in Section 1.1, the Parties shall work jointly to agree upon an updated scope for a subsequent Operations Plan as follows:

(i) A 2022 Operations Plan shall be finalized no later than January 1, 2022, and shall be effective from January 1, 2022 through December 31, 2022, contingent upon City Council approval, as evidenced by passage of an ordinance.

(ii) A 2023 Operations Plan shall be finalized no later than January 1, 2023 and shall be effective from January 1, 2023 through December 31, 2023, contingent upon City Council approval, as evidenced by passage of an ordinance.

Following approval by each respective governing body, the 2022 and 2023 Operations Plans shall become incorporated into this Agreement as **Exhibit D** and **Exhibit E**, respectively.

2.2.2 The Parties understand that circumstances during any period of time may differ from those contemplated when a business plan is established; however, any material changes to approved Operations Plan must be approved in writing by SAEDF and City.

2.3 Performance Goals. City and SAEDF shall establish “Performance Goals” against which SAEDF’s execution of the Operations Plan is evaluated. If there are changing market conditions, funding availability issues, unforeseen expenses, or other circumstances beyond SAEDF's reasonable control, then the current Performance Goals may be revised, with City's written approval.

2.4 Reporting. SAEDF shall maintain reasonable levels of communication with City staff throughout the term of this Agreement. SAEDF shall provide, upon reasonable request, reports to City discussing in appropriate detail (in all cases, taking into account the need to maintain a high level of confidentiality with respect to proprietary and competitive matters) its progress in implementing the Operations Plan and meeting Performance Targets, as specified in this Agreement, as well as reporting on any activity that SAEDF believes to be of interest to City. SAEDF shall respond within 30 days of that reasonable request. In addition, SAEDF agrees to provide to City the following:

- (i) a monthly status report, which shall be provided to the City during either a meeting or written report;
- (ii) a quarterly digital file with all details of any reported aggregated metrics to include data fields requested by City staff based on reported activities;
- (iii) aligned and cohesive quarterly and annual written status reports and general accountings due no later than the end of each month following quarter end, and;
- (iv) on reasonable request of City, periodic update presentations that address the Services provided pursuant to this Agreement and;
- (v) For Business, Retention, Expansion (BRE) meetings/visits, when applicable, SAEDF will notify the City of upcoming meetings to determine if the City will participate in the meeting. Notice should be given at least 3 days prior if scheduling permits.

2.5 City's Satisfaction. All work performed by SAEDF hereunder shall be performed to the satisfaction of City. City shall have the right to terminate this Agreement, in accordance with Article VII entitled "Termination," in whole or in part, if SAEDF's work is not satisfactory to City, as determined by City in its discretion. Satisfaction may be based on a number of non-exclusive and non-dispositive factors, which may include quantitative and qualitative measures, the performance of specific activities, progress towards SAEDF's mission, expected outcomes, and analysis of overall economic development gains in the City.

### **III. COMPENSATION TO SAEDF**

3.1 Compensation. As compensation for the Services, City shall pay to SAEDF a cumulative total of up to SIX HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$635,000.00). Payments shall not be due or owed until execution of this Agreement and of the Consulting Agreement between SAEDF and Hiroyuki Watanabe (a/k/a Texas-Japan Office) and as specified in 3.1.1. Payments shall be subject to terms agreed to as follows:

3.1.1 For the period beginning January 1, 2021 and ending July 30, 2021, City shall disburse to SAEDF an amount not to exceed \$317,500. Payments shall be made quarterly and shall be subject to SAEDF's satisfactory performance of the 2021 Operations Plan at City's sole discretion.

3.1.2 For the period beginning August 1, 2021 and continuing until termination of the Agreement, funding shall be disbursed quarterly in alignment with the Performance Goal percentage attained for each metric set out in the Performance Scorecard and Payment Plan attached hereto as **Exhibit C**, which may be updated from time to time and approved in writing by the Parties.

3.2 No additional fees or expenses of SAEDF shall be charged by SAEDF nor shall be payable by City for the Services provided under this Agreement. The parties hereby agree that all expenses of SAEDF that are compensable by City have been provided for in the total payment to SAEDF. Those total payments cannot exceed the amount set forth above, without prior approval and agreement of all Parties, as evidenced in writing and as approved by the City Council, as evidenced by passage of an ordinance.

- 3.3 Use of Funds. The funds provided by City under this Agreement shall be used solely in connection with SAEDF's Services described in Article II, pursuant to the budget prepared as part of the Operations Plan. SAEDF shall segregate all funds provided under this Agreement into a separate account and shall not commingle any funds supplied by City with the SAEDF's general funds or with other funds received by any other entity.
- 3.4 Additional Services. Should any additional services outside the scope of this Agreement be requested and authorized by City, and accepted by SAEDF, SAEDF shall be separately compensated for those services over and above the compensation discussed in this Article III, at an amount agreed to by City and SAEDF.
- §.5 Invoices. To receive disbursements, SAEDF shall submit post-quarterly invoices, accompanied by a status report to:
- City of San Antonio  
Economic Development Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966
- 3.5.1 Subject to terms set out in sections 3.1, 3.2 and 3.3, City shall pay SAEDF invoices within 30 days of receipt and approval by the Director.

#### **IV. AUDIT**

- 4.1 SAEDF's Audit. In accordance with its standard practices, SAEDF shall obtain an annual audit conducted by an independent auditing firm during the Term of this Agreement. The audit shall include an audit of the separate account maintained to receive and to disburse funds provided by City to SAEDF pursuant to this Agreement. A copy of the audit report and management letter prepared as a result of the audit shall be provided to City.
- 4.2 City's Audit. City or its authorized representative shall, at all reasonable times, have the right to examine, inspect, and audit all books, papers, and bank records of SAEDF directly related to the funds provided to SAEDF under this Agreement to determine the accuracy of reports made under this Agreement. Expenses incurred by City incident thereto shall be the sole responsibility of and borne by City. Those records shall be maintained by SAEDF for a period of four (4) years after the termination of the Term of this Agreement and any applicable renewal term, and shall be made available for inspection and/or for audit by City or its agents at SAEDF's facility. Nothing in this Agreement shall be deemed to give City authority to direct, to question, to review, to audit, or otherwise to influence the expenditure of any funds that are not directly paid to SAEDF by City.
- 4.3 Dispute Findings. Either SAEDF or City may dispute the findings of audits performed under this Agreement, by giving written notice to the other Party within thirty (30) days of receiving the results of an audit. The Party electing to dispute audit results shall, within thirty (30) days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.
- 4.4 Scope. City recognizes that SAEDF provides services to various entities and organizations

unaffiliated with City and City's interest in SAEDF's activities is solely based upon the Services provided pursuant to this Agreement. Therefore, any audits, reports or information requested by City are understood to be limited in scope to the funding provided to SAEDF by City under the terms and conditions of this Agreement; provided, however, that no audit pursuant to this Article IV will identify any potential prospect or company by name or in enough detail for the identity to be discovered, nor shall any audit reveal or disclose any of SAEDF's proprietary information or trade secrets.

## **V. DOCUMENTS**

- 5.1 Documents. The Parties recognize that, to be successful, SAEDF depends on its ability to keep confidential the identity of its prospects and other proprietary information, and that SAEDF would not achieve the same level of results from providing the Services, or any other services to its other clients and constituents, without being able to maintain that confidentiality. Accordingly, the Parties acknowledge that certain writings, documents or information produced by or submitted to SAEDF in the course of its execution of the Services will be the sole property of SAEDF, are proprietary, and may be privileged under State law. Without waiving any available claim or privilege, SAEDF will in good faith share information derived from those writings or documents with City and, if any writings, documents or information are deemed non-proprietary or non-privileged, provide copies of those writings or documents to City. SAEDF understands and acknowledges that City has the right to use those non-proprietary writings, documents and information as City desires, without restriction. If any "open records" or equivalent request is made of City relating to this Agreement or to the Services, City shall promptly advise SAEDF, and the Parties shall work cooperatively and in good faith to preserve SAEDF's trade secrets, proprietary documents, and confidential information. In all events, City shall not provide any information or documents that SAEDF considers proprietary to any third party without SAEDF's written consent, unless City is legally obligated to do so and so advises SAEDF in writing. In addition, any third-party requests to SAEDF for records relating to this Agreement under the State's Public Information Act shall be coordinated with City. City shall provide SAEDF, in accordance with the Public Information Act, the opportunity to submit third-party briefs to the State Attorney General.
- 5.2 Documents to City. Upon expiration or termination of this Agreement, SAEDF shall transfer to City true and correct copies of any non-proprietary writings, documents or information in the possession of SAEDF and produced pursuant to the terms and conditions of this Agreement.

## **VI. RECORDS RETENTION**

- 6.1 Records. SAEDF and its subcontractors, if any, shall maintain all documents, papers, and records, and other evidence pertaining to the Services and funding provided for in this Agreement, and shall make such documents available to City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period for purposes of the audit described in Article IV.
- 6.2 Retention. SAEDF shall retain any and all documents produced as a result of services or of

funding provided hereunder for a period of four (4) years from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or there are other questions arising from, involving or concerning this documentation or concerning the services provided hereunder, SAEDF shall retain the records until the resolution of such litigation or other such questions.

## **VII. SUSPENSION/TERMINATION**

- 7.1 **Suspension.** City may summarily suspend this Agreement if it reasonably believes that SAEDF has breached this Agreement in any material way, including by violating any City, State or Federal laws. City shall promptly apprise SAEDF of the basis of City's reasonable belief. Any such suspension shall remain in effect until City determines that appropriate measures have been taken to ensure SAEDF's future compliance. Grounds for such suspension include, but are not limited to the following:
- 7.1.1 Failure to abide by any terms or conditions of this Agreement;
  - 7.1.2 Failure to keep and to maintain adequate proof of insurance as required by this Agreement;
  - 7.1.3 The commission or alleged commission of any crime by SAEDF, or by any owner, part owner, partner, business associate, principal party, officer, or director.
- 7.2 **Termination Defined.** For purposes of this Agreement, "termination" shall mean termination by expiration of the Agreement term as stated in Article I. Term, or by earlier termination pursuant to any of the provisions hereof.
- 7.3 **Termination Without Cause.** This Agreement may be terminated by either Party upon sixty (60) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.4 **Termination For Cause.** Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, 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:
- 7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.
  - 7.4.2 The cessation of operations for a period of time exceeding twenty (20) days;
  - 7.4.3 The expenditure of City funds on gratuities in the form of entertainment, gifts, or otherwise offered or given by SAEDF, or any agent or representative of SAEDF, to any officer or employee of City, County, State or business prospect with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract.
  - 7.4.4 SAEDF's involvement in litigation against City as discussed in section 14.2

- 7.4.5 SAEDF's breach of section 26.4 or of Article XXVII relating to contracts with companies boycotting Israel or engaged in certain business.
- 7.5 Defaults With Opportunity for Cure. Should SAEDF default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of the default, specifying in detail the matter(s) in default. SAEDF shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SAEDF fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice and without adoption of a City ordinance, to terminate this Agreement in whole or in part as City deems appropriate. The following actions are defaults that may be cured by SAEDF:
- 7.5.1 Performing unsatisfactorily, in the sole discretion of City;
- 7.5.2 Failing to perform or failing to comply with any covenant herein required in sole discretion of City; and
- 7.5.3 Entering into bankruptcy or selling substantially all of company's assets,
- 7.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.7 Ceasing City Activity. Upon the effective date of expiration or termination of this Agreement, SAEDF shall cease all work being performed by SAEDF or by any of its subcontractors on behalf of City.
- 7.8 Transition Period. Regardless of the method by which this Agreement is terminated, SAEDF agrees to provide a transition period of termination for a period not to exceed two (2) months upon City's request and at City's sole discretion. During such transition period, SAEDF may continue to provide services as provided for, and for which it will be compensated, under this Agreement.

## VIII. NOTICE

- 8.1 Written Notice. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

**If to City:**

Alejandra Lopez  
 EDD Director  
 City of San Antonio  
 P.O. Box 839966  
 San Antonio, TX 78283-3966

**If to SAEDF:**

Jenna Saucedo-Herrera  
 President & CEO  
 San Antonio Economic  
 Development Foundation  
 112 E. Pecan, Suite 2635

82 Time. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either Party may change its mailing address or the person to receive notice by notifying the other Party as provided in this paragraph.

**IX. INSURANCE**

9.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, SAEDF shall furnish an original completed Certificate(s) of Insurance to City Economic Development Department and to City Clerk’s Office, and which shall be clearly labeled “Economic Development Foundation- Services Agreement” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and must be mailed directly from the agent to City. City shall have no duty to pay or to perform under this Agreement until such certificate shall have been delivered to City Economic Development Department and to City Clerk’s Office, and no officer or employee, other than City Risk Manager, shall have authority to waive this requirement.

9.2 Right to Review. City reserves the right to review the insurance requirements of this Article during the Term of this Agreement 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, but in no instance will City allow modification whereupon City may incur increased risk.

9.3 Financial Integrity. SAEDF’s financial integrity is of interest to City; therefore, subject to SAEDF’s right to maintain reasonable deductibles in such amounts as are approved by City, SAEDF shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAEDF’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to City, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' compensation	Statutory
2. Employers' liability	\$500,000/\$500,000/\$500,000



<p>3. Commercial general liability insurance to include coverage for the following:</p> <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>b. Independent contractors</li> <li>c. Products/completed operations</li> <li>d. Personal injury</li> <li>e. Contractual liability</li> </ul>	<p>For bodily injury and property damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage</p>
<p>4. Business automobile liability</p> <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired vehicles</li> </ul>	<p>Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence</p>

9.4 Copies. City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by City, 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 upon the underwriter of any such policies). So long as this Agreement is in effect, SAEDF 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 in Section 9.6 herein within 10 days of the requested change. SAEDF shall pay any costs incurred resulting from said changes.

9.5 Required Provisions. SAEDF agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with 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 City of San Antonio where City is an additional insured shown on the policy; and
- Provide a waiver of subrogation in favor of City workers’ compensation and employers’ liability policies.

9.6 Cancellation/Non-Renewal. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, SAEDF shall notify City of such and shall give such notice not less than thirty (30) days prior to the change, if SAEDF knows of said change in advance, or ten (10) days after the change, if SAEDF did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to City at the following address:

City of San Antonio

City of San Antonio

Economic Development Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 9.7 Failure to Maintain. In addition to any other remedies City may have upon SAEDF's failure to provide and to maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order SAEDF to stop work hereunder, and/or to withhold any payment(s) which become due to SAEDF hereunder until SAEDF demonstrates compliance with the requirements hereof.
- 9.8 Responsibility of SAEDF. Nothing herein contained shall be construed as limiting in any way the extent to which SAEDF may be held responsible for payments of damages to persons or to property resulting from SAEDF's or its subcontractors' performance of the Services covered under this Agreement.
- 9.9 Primary Insurance. It is agreed that SAEDF's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City of San Antonio for liability arising out of operations under this Agreement.

#### **X. INDEMNIFICATION**

- 10.1 **SAEDF covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, City and the elected officials, employees, officers, directors, and representatives of 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 City arising out of or resulting from SAEDF activities under this Agreement, including any acts or omissions of SAEDF, any agent, officer, director, representative, employee of SAEDF or of any subcontractor of SAEDF, 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 SAEDF 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 10.2 The provisions of this indemnity are solely for the benefit of the Parties hereto and are not intended to create or to grant any rights, contractual or otherwise, to any other person or entity. SAEDF shall advise City in writing within three business days of any claim or demand against City or SAEDF known to SAEDF related to or arising out of SAEDF's activities under this Agreement and shall see to the investigation and defense of such claim or demand at SAEDF's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving SAEDF of any of its obligations under this paragraph.

## **XI. ASSIGNMENT AND SUBCONTRACTING**

- 11.1 **Qualified Personnel**. SAEDF shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to Services pursuant to this Agreement shall be employees or subcontractors of SAEDF.
- 11.2 **Subcontractors**. SAEDF shall identify in its annual budget submitted to City any subcontractors that SAEDF intends to use to provide Services under this Agreement. On the approval of the annual budget, the subcontractors identified in it are deemed approved by City. Any subcontracts that arise during the year that have an annual subcontracted value in excess of \$20,000.00 and that are not included in the budget, must be approved by City.
- 11.3 **Written Agreement**. Any Services subcontracted by SAEDF hereunder with an annual value in excess of \$100,000.00 shall be by written contract and, unless specific waiver is granted in writing by 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 SAEDF. City shall in no event be obligated to any third party, including any subcontractor of SAEDF, for performance of Services or for payment of fees.

## **XII. INDEPENDENT CONTRACTOR**

- 12.1 SAEDF and City covenant and agree that SAEDF is an independent contractor and not an officer, agent, servant or employee of City; that SAEDF shall have control of and right to control, in its sole discretion, the details of the Services performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and SAEDF; that the doctrine of respondent superior shall not apply as between City and SAEDF, its officers, agents, employees, contractors, subcontractors and SAEDF, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and SAEDF. The Parties hereto understand and agree that 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 SAEDF under this Agreement and that SAEDF has no authority to bind City.

## **XIII. CONFLICT OF INTEREST**

- 13.1 **City's Ethics Code**. SAEDF acknowledges that it is informed that the Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 13.2 The Executive Committee of SAEDF shall comply with the Conflicts of Interest Policy set out in **Exhibit "F."**

**XIV. LEGAL/LITIGATION EXPENSES**

- 14.1 Litigation Against City. Under no circumstances will the funds received under this Agreement or any other funds received from City be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City.
- 14.2 Termination. During the term of this Agreement, if SAEDF files and/or pursues an adversarial proceeding against City, at City’s option, this Agreement and all access to the funding provided for hereunder may terminate if it is found that SAEDF has violated this Article.

**XV. AMENDMENTS**

- 15.1 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 Parties, and subject to approval by City Council, as evidenced by passage of an ordinance. The Parties may exercise two, one-year extensions of the agreement without further approval by City Council, provided, however, that City Council approve updated Operations Plans corresponding with the extension period.

**XVI. SEVERABILITY**

- 16.1 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 City Charter, City Code, or ordinances of 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 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.

**XVII. LICENSES/CERTIFICATIONS**

- 17.1 SAEDF warrants and certifies that, to its knowledge, SAEDF 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.

**XVIII. COMPLIANCE WITH LAWS**

- 18.1 SAEDF shall perform all Services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

**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 as a relinquishment for the future of such covenant or option.

#### **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 City of San Antonio, Bexar County, Texas.

#### **XXI. LEGAL AUTHORITY**

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

#### **XXII. PARTIES BOUND**

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

#### **XXIII. CAPTIONS**

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

#### **XXIV. INCORPORATION OF EXHIBITS**

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

- EXHIBIT A: 2021 Operations Plan
- EXHIBIT B: Map of City Limits and ETJ
- EXHIBIT C: Performance Scorecard and Payment Plan
- EXHIBIT D: 2022 Operations Plan (to be added pursuant to this Agreement)
- EXHIBIT E: 2023 Operations Plan (to be added pursuant to this Agreement)
- EXHIBIT F: SAEDF Conflict of Interest Policy
- EXHIBIT G: SAEDF Acknowledgment of Conflict of Interest Policy
- EXHIBIT H: Annual Operating Budget

**XXV. ENTIRE AGREEMENT**

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 XV. Amendments.

**XXVI. PROHIBITION AGAINST CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 26.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
  - (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 26.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 26.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 26.4 By submitting an offer to or by executing contract documents with City, SAEDF hereby verifies that it does not boycott Israel to the extent required by state law and will not boycott Israel during the Term of this Agreement. City's hereby relies on SAEDF's verification. If found to be false, City may terminate this Agreement for material breach.

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

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

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO, TEXAS,**

A Municipal Corporation

\_\_\_\_\_  
**Eric Walsh**  
City Manager

**SAN ANTONIO ECONOMIC  
DEVELOPMENT  
FOUNDATION**

A Texas Nonprofit Corporation

\_\_\_\_\_  
  
**Jenna Saucedo-Hertera**  
President & CEO

**ATTEST:**

\_\_\_\_\_  
**Tina J. Flores**  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**EXHIBIT A:  
2021 Operations Plan**

DRAFT



**EXHIBIT B:**  
**Map of City Limits and ETJ**

DRAFT

EXHIBIT C:  
Performance Scorecard and Payment Plan

DRAFT