

PROFESSIONAL SERVICES CONTRACT
SALES AND USE TAX AUDIT SERVICES

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Contract is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as “**CITY**”), a Texas home-rule municipal corporation acting by and through its City Manager or his designee, and **SALES TAX ASSURANCE, LLC, d/b/a HdL COMPANIES**, a limited liability company chartered under the laws of the State of Texas, acting herein through its President/CEO, Managing Member (hereinafter referred to as “**CONTRACTOR**”). **CITY** and **CONTRACTOR** are sometimes herein collectively referred to as the “Parties”.

WHEREAS, in accordance with the provisions of Texas Tax Code Chapter 151 (the Limited Sales, Excise and Use Tax Act) and Texas Tax Code Chapter 321 (Municipal Sales and Use Tax Act), state and local sales, excise and use taxes (the “Taxes”) are imposed, collected, and remitted by affected businesses (including the City) operating within the corporate limits of the City, and allocated by the Texas Comptroller of Public Accounts (“TCPA”) back to the City; and

WHEREAS, in connection with the imposition, collection and remittance of the Taxes and the allocation by TCPA, the City desires to obtain professional services to determine if **(1)** all businesses operating within the City that are subject to the Taxes are in fact remitting the appropriate amount to TCPA; **(2)** all internet sales that are subject to local City of San Antonio sales and use tax are in fact remitting the appropriate amount to TCPA; and **(3)** TCPA is correctly allocating to the City all city sales and use tax due to the City each month; and

WHEREAS, in response to Request For Proposal No. RFP 21-048 (“RFP”) issued by **CITY**, **CONTRACTOR** has submitted its Proposal to provide the professional services described above to **CITY**; NOW THEREFORE:

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word “**CONTRACTOR**” as used herein shall refer to **SALES TAX ASSURANCE, LLC, d/b/a HdL COMPANIES**.
- 1.2 “**Department**” means the City’s Finance Department.

1.3 “**Director**” means the City’s Deputy Chief Financial Officer.

II. SCOPE OF SERVICES

CONTRACTOR shall provide the following services:

- 2.1 **CONTRACTOR** shall provide all services and perform all acts necessary to complete all of the services described in this **ARTICLE II. SCOPE OF SERVICES**.
- 2.2 **CONTRACTOR** shall discharge its duties under this Contract as a prudent expert solely in the interests of the **CITY** with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Contract and in a manner that avoids conflicts of interest and self-dealing.
- 2.3 **CONTRACTOR** shall at all times be sufficiently staffed with personnel qualified to render all of its services specified in this Contract.
- 2.4 **CONTRACTOR** shall perform all of its services under this Contract with minimal disruption and interference with **CITY’S** normal day-to-day operations.
- 2.5 **CITY** shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should **CONTRACTOR’S** work not be acceptable to the Director, in his sole, unfettered discretion.
- 2.6 **Start-up Meeting.** Not more than fifteen (15) days after this Contract has been executed by the Parties, **CITY** and **CONTRACTOR** will meet to review planned activities, to establish key contact information, to review administrative requirements of the **CITY** and to establish reporting dates and protocols with the **CITY**.
- 2.7 **Data collection and Database Development.** **CONTRACTOR** will acquire on behalf of **CITY** certain data and information from TCPA related to **CITY’S** sales and use tax receipts. **CONTRACTOR** will acquire from third party and other public sources other public information related to **CITY**. **CONTRACTOR** will then assemble the acquired data into a comprehensive proprietary database to be used in its analytics. **CONTRACTOR** will routinely update the **CITY** database as new data is available.
- 2.8 **Detection of Errors and Omissions.** **CONTRACTOR** will begin its data collection and analysis process not more than fifteen (15) days after completion of the Start-up Meeting held pursuant to Section 2.6 above. This process will consist of the following:
 - a. Physical Canvassing. As warranted and based on an identified potential issue, **CONTRACTOR** will conduct physical canvassing of businesses located in **CITY’S** boundaries. This screening may be in regard to a sales tax permit issue or other relevant matters.

- b. Timely Screening and Analysis. **CONTRACTOR** will monitor every significant business reporting tax to **CITY** on a monthly basis. **CONTRACTOR** will perform its error and omissions screening process monthly in order to identify errors and begin the research and corrections process as soon as possible.
- c. Database and Analytics. **CONTRACTOR** will utilize its proprietary algorithms and analytical tools to screen for and identify:
 - i. Businesses which may be located in the limits of **CITY** but are not reporting tax;
 - ii. Businesses located within the limits of **CITY** which are paying tax but not at the appropriate level;
 - iii. Businesses located in the City which may be paying taxes now but did not pay past taxes they should have;
 - iv. Businesses located within the limits of **CITY** which may have paid taxes to another Jurisdiction by mistake;
 - v. Businesses located outside of the limits of **CITY** which should be paying taxes to the City but have not;
 - vi. Businesses located outside of the limits of **CITY** which are paying taxes to the City but not at the appropriate level;
 - vii. Businesses located within or outside the limits of **CITY** which may have under-reported tax for some period of time.
- d. Follow-up Screening. **CONTRACTOR** will monitor errors or omissions that have been corrected to ensure they remain fixed.

2.9 Correction of Errors and Omissions. Once errors and omissions have been detected, **CONTRACTOR** will use its best efforts to work with businesses and TCPA to correct them. These efforts will include the following:

- a. Working with TCPA. **CONTRACTOR** will represent and handle all necessary interactions with TCPA on behalf of **CITY**.
 - i. Once an issue has been identified as a potential problem and the solution lies with a change or correction within TCPA's revenue accounting operation, **CONTRACTOR** will bring the issue to the attention of the appropriate TCPA staff person. **CONTRACTOR** will monitor the status of this process on an ongoing basis to identify when corrected reporting to **CITY** begins.

- ii. There are circumstances when an issue is not resolvable through normal corrections processes within TCPA's revenue accounting department and must be directed to TCPA's audit department. In this situation, the ability to monitor status is limited as the TCPA's audit process is confidential. CONTRACTOR will use its best efforts to monitor the issue until it is finally resolved.

- b. Working with Businesses. In the event that initial research on or final resolution of an issue requires dealing directly with a business, CONTRACTOR will use its best efforts to find errors and determine to whom an inquiry needs to be made to resolve them. CONTRACTOR will also use its best efforts to deal credibly with a business' accountant or tax staff to resolve the issue.

2.10 Documenting Corrections, Commissions and Audit Trail. As issues are resolved, CONTRACTOR will document them in routine updates to CITY. The documentation shall include the amount of the local sales tax collections made by the affected company (taxpayer) for CITY by month for the periods involved related to determining commission fees due to CONTRACTOR for any recovered, new or increased sales/use tax as a result of its work or recommendations. CONTRACTOR will also maintain in its work product records sufficient detail of actions taken that identify and resolve the particular business issue should CITY or its auditors wish to further verify the source and rationale for the recovered, new or increased tax.

2.11 Reports. In addition to its internal research reports, CONTRACTOR'S sales/use tax review, audit and recovery services INCLUDES AT NO ADDITIONAL FEE, a series of reports for CITY'S information. These reports shall include the following:

- a. **Sales Tax Analysis Report** (provided monthly). STAR is aligned with CITY'S fiscal year and provides insight into the source, composition and change over time of CITY'S sales tax revenue. Also included will be a graphical report comparing CITY'S sales tax revenue growth to neighboring jurisdictions. Set out below is a list and summary description of the reports included in the STAR portfolio:
 - i. Sales Tax Snapshot Report (STS). This report is a one-page tabular and graphical summary snapshot of the sales tax collections and its major component make-up with a trend projection of the expected sales tax for the current fiscal year.

 - ii. Monthly Sales Tax Payments Trend Table/Graphic (MSTG). Provides a 5 year tabulation by month by fiscal year of the actual cash sales tax payments received by jurisdiction and the same month year-over-year change and cumulative fiscal year-to-date change in tax cash payments.

- iii. Industry Segment Rank & Distribution Graphic (ISRD). Aggregates sales tax payments by businesses into industrial segments and ranks those segments and graphically shows the segment sales distribution.
 - iv. Industry Segment Trend Graphic (1ST). Shows the 5 quarter trend of the sales by the largest segments.
 - v. Industry Segment Rank and Change (ISRC). Shows the tax collections by segment ranked and their change for current fiscal year-to-date compared to the same prior period.
 - vi. Sales Tax Payment Detail (STPD). Shows the components of the current month's cash payments received compared to the same month prior year as well as the fiscal year-to-date comparison.
 - vii. Top 30 Rank and Change (TOP30). Shows the current month top 30 businesses reporting sales tax in rank order and their aggregated total payments compared to the same period prior year. This report is designed to be non-confidential.
 - viii. Top 100 Rank and Change (TOP100). Shows the current month and fiscal year-to-date payments by the top 100 businesses payments compared to the same prior month and fiscal year. This is a confidential report.
 - ix. Monthly Variance (MVAR). Shows the businesses with the largest positive or negative variance in payments compared to the same month last fiscal year. This is a confidential report.
 - x. Fiscal YTD Variance (FYTDVAR). Shows the b businesses with the largest positive or negative variance in payments current fiscal YTD compared to prior fiscal YTD.
 - xi. Sales Tax Trend Graphic (STTG). Shows the same month year-over-year change in sales tax collections of the City compared with other neighboring local jurisdictions.
- b. **STAR Supplement** (provided quarterly).
- i. Texas Business Cycle Indexes Report. This report is provided quarterly and is a trend graphic of the growth of the Texas Metro Business Cycle Indexes and the Texas Leading Index. These graphics are based on the Federal Reserve Bank of Dallas data and provide insight into the current and future economic trends in the major metro areas of Texas, including San Antonio, and the State of Texas itself.

- ii. Texas Forecast: Sales Tax Trends and Economic Drivers. This forecast report is issued quarterly and provides industry-specific context for statewide sales and use tax projected trends across eight business categories defined by CONTRACTOR. A spreadsheet-driven forecast tool accompanies the quarterly report to allow the CITY to combine insights from the Texas Forecast, the CITY's sales and use tax data, and the CITY's knowledge of its economic circumstances to project sales and use tax revenue for future reporting periods.
- c. **Sales Tax Audit Update Report** (provided intermittently as needed). This report summarizes audit activities including businesses reviewed, issues identified and issues resolved. Over time as improvements data is accumulated it will include an Improvements Summary Graphic.

2.12 **CITY Authorizations.** As requested by CONTRACTOR, CITY will provide CONTRACTOR Letters of Authorization on CITY'S letterhead for TCPA and for "To Whom It May Concern" allowing CONTRACTOR to request, receive and act on information relevant to CITY'S sales/use tax. CONTRACTOR will provide the letters in draft form. CITY shall have the right to revise each draft as it deems appropriate in its sole, unfettered discretion.

2.13 **Implementation and Timeline.** CONTRACTOR will begin its services not more than ten (10) days after the Commencement Date. Corrective actions will begin when errors and omissions issues are identified. It is not possible to forecast a time to resolution as situations vary. A comprehensive sales/use tax audit must be ongoing and iterative and is never "complete".

2.14 **Exceptions, Representations, Acknowledgements and Assumptions.**

- a. CONTRACTOR's services rely on certain information from the TCPA and other sources. CONTRACTOR makes reasonable efforts to verify such information is accurate but makes no warranties or representations as to its accuracy.
- b. It will be necessary for the City to cooperate in providing CONTRACTOR access to sales tax information as long as necessary to fully complete any conditions of compensation which may survive the project termination.
- c. The City and the TCPA have and retain exclusive authority and responsibility for administering and enforcing the City's sales and use tax. CONTRACTOR is acting as an agent on behalf of the City and will utilize its expertise, proprietary technology and software to provide the services to complement and supplement the City's actions, if any.

III. TERM AND COMMENCEMENT OF WORK

- 3.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the initial term of this Contract shall be for three (3) years, commencing July 1, 2021 and ending June 30, 2024. In addition, **CITY** shall have the option to renew and extend the Contract for two (2) additional one (1) year term under the same terms and conditions or such other terms and conditions as the Parties agree to in writing at the time of such extension. City Council approval of such extension shall be required. Continuation of this Contract for each **CITY** Fiscal Year beyond September 30, 2021 is subject to and contingent upon an annual appropriation of funds by City Council. **CITY** shall notify **CONTRACTOR** promptly if the necessary appropriation of funds has not been made.

IV. CONTRACT PRICING AND BILLING

- 4.1 As sole compensation to **CONTRACTOR** for its services performed in accordance with the provisions of this Contract, **CONTRACTOR** shall be entitled to twenty-two and one half (22.5%) of any recovered and/or new or increased (prospective) sales/use tax payments that are a result of **CONTRACTOR'S** work or recommendations. Provided, however, a commission attributable to any one taxpayer during any contract year shall be capped at and shall not exceed \$100,000. Commissions for new and/or increased sales/use tax payments shall be capped at 24 monthly payment periods forward from the month correct sales/use tax begins. Recovered tax is defined as tax recovered for any prior periods and may extend back for as much as 48 months (statute of limitations).
- 4.2 **CONTRACTOR'S** commission calculations shall account for the TCPA's 2% administrative fee. Confidential business data in TCPA's database is of sales/use tax collections by businesses on behalf of **CITY**. **CONTRACTOR'S** commission fees are based on net payments received by **CITY**. Thus collections for determining commissions are reduced by 2% to impute a "net payment" before application of the commission percentage rate.
- 4.3 **CONTRACTOR'S** claims for commissions shall be submitted with documentation which includes sales tax collections detail by individual taxpayers, by month, as extracted from the TCPA database. The documentation shall provide a comprehensive, cumulative accounting of recovered, new and/or increased tax for which commissions are due.
- 4.4 Commissions payable to **CONTRACTOR** shall be determined and invoices shall be submitted by **CONTRACTOR** to **CITY** in arrears and only after **CITY** has received payments of the recovered and/or new or increased sales/use tax.
- 4.5 Commissions, if any, shall be invoiced on a contract quarter cycle, typically at the end of the 3rd month of a contract quarter.
- 4.6 **CITY'S** commission obligations for prospective taxes shall survive contract expiration or termination until those obligations are complete. **CITY** agrees to cooperate in providing

CONTRACTOR the necessary authorizations and access to information as long as necessary to enable **CONTRACTOR** to fully complete any conditions of compensation which may survive the project's expiration or termination.

V. OWNERSHIP OF DOCUMENTS; INTELLECTUAL PROPERTY

- 5.1 In no event shall the Work Product be considered “work for hire” as the term is defined in the Uniform Commercial Code.
- 5.2 Notwithstanding anything contained to the contrary in this Contract or in any Statement of Work or other attachment hereto, any and all intellectual property or other proprietary data owned by **CONTRACTOR** prior to the effective date of this Contract or developed by **CONTRACTOR** outside of the scope of this Contract but not as a Deliverable or part of the Work Product (“Consultant Information”) shall remain the exclusive property of **CONTRACTOR** even if such Consultant Information is embedded or otherwise incorporated into the Work Product or used to develop the Work Product. **CITY’S** rights under this Article shall not apply to any Consultant Information or any component thereof regardless of form or media.
- 5.3 Upon payment in full of all applicable fees, **CITY** shall receive and be the exclusive owner of all Deliverables and information, documents, writings, and instruments necessary to operate those Deliverables.

VI. RECORDS

- 6.1 **CONTRACTOR** and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the **CITY** at their respective offices, at all reasonable times and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 6.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, **CONTRACTOR** shall retain the records until the resolution of such litigation or other such questions. **CONTRACTOR** acknowledges and agrees that **CITY** shall have access to any and all such documents at any and all times, as deemed necessary by **CITY**, during said retention period. **CITY** may, at its election, require **CONTRACTOR** to return said documents to **CITY** prior to or at the conclusion of said retention.

- 6.3 **CONTRACTOR** shall notify **CITY**, immediately, in the event **CONTRACTOR** receives any requests for information from a third party, which pertain to the documentation and records referenced herein. **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

VII. TERMINATION

- 7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provisions of services required herein or earlier termination pursuant to any of the provisions hereof.

- 7.2 Termination for Convenience. This Contract may be terminated by **CITY** upon thirty (30) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

- 7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, **CITY** may terminate this Contract 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:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XIII. Assignment and Subcontracting;

7.3.2 Any material breach of the terms of this Contract, as determined solely by City.

- 7.4 Defaults With Opportunity for Cure. Should **CONTRACTOR** default in the performance of this Contract in a manner stated in this section 7.4 below, same shall be considered an event of default. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **CONTRACTOR** shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If **CONTRACTOR** fails to cure the default within such 30 day cure period, **CITY** shall have the right, without further notice, to terminate this Contract in whole or in part as **CITY** deems appropriate, and to contract with another party to complete the work required in this Contract. **CITY** shall also have the right to offset the cost of said new Contract with a new party against **CONTRACTOR'S** future or unpaid invoice(s), subject to the duty on the part of **CITY** to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XII SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets.

7.4.3 Failing to perform or failing to comply with any covenant herein required

7.4.4 Performing unsatisfactorily

- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Contract is terminated, **CONTRACTOR** shall effect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **CONTRACTOR**, or provided to **CONTRACTOR**, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by **CONTRACTOR** in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at **CONTRACTOR'S** sole cost and expense. Payment of compensation due or to become due to **CONTRACTOR** is conditioned upon delivery of all such documents, if requested.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Contract, **CONTRACTOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this Contract through the effective date of termination. Failure by **CONTRACTOR** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **CONTRACTOR** of any and all right or claims to collect moneys that **CONTRACTOR** may rightfully be otherwise entitled to for services performed pursuant to this Contract.
- 7.8 Upon the effective date of expiration or termination of this Contract, **CONTRACTOR** shall cease all operations of work being performed by **CONTRACTOR** or any of its subcontractors pursuant to this Contract.
- 7.9 Termination not sole remedy. In no event shall **CITY'S** action of terminating this Contract, whether for cause or otherwise, be deemed an election of **CITY'S** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY'S** right to seek damages from or otherwise pursue **CONTRACTOR** for any default hereunder or other action.

VIII. NOTICE

- 8.1 Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or 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:	If intended for CONTRACTOR , to:
City of San Antonio Finance Department Attn: _____ 111 Soledad ___ Floor San Antonio, Texas 78205 or P.O. Box 839966 San Antonio, Texas 78283-3966	SALES TAX ASSURANCE, LLC, d/b/a HdL Companies Attn: Richard Fletcher 9821 Katy Freeway, Suite 440 Houston, Texas 77024

IX. CONFLICT OF INTEREST

- 9.1 **CONTRACTOR** certifies and warrants that neither **CONTRACTOR** nor any of its agents, representatives or employees has paid or offered to pay any bribe, kickback or similar payment or other consideration to be selected for the award of this contract or to influence the selection of its proposal.
- 9.2 **CONTRACTOR** certifies and warrants that after reasonable investigation to the best of its knowledge, no person who will in any way either directly participate in or directly supervise any agent, representative or employee who directly participates in the performance of the obligations hereunder has or will have any conflict of interest, direct or indirect, with **CITY**. For purposes of this subsection, “conflict of interest” shall mean that the entity or person has an interest that is materially and directly adverse to the interest of the **CITY** other than the vendor/customer relationship existing pursuant to this Contract.
- 9.3 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio City Charter and its Ethics Code prohibit a City officer or employee, from having a financial interest in any contract with the **CITY** or any City agency, such as City-owned utilities. A City “employee” is any employee of the **CITY** who is required to file a financial disclosure statement pursuant to Section 1(a) of Part G (Financial Disclosure Report). A City “officer” includes the Mayor or any Council member; a Municipal Court Judge or Magistrate; or a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the **CITY**. An officer or employee has a “prohibited financial interest” in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his 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.

Pursuant to the subsection above, **CONTRACTOR** warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONTRACTOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contacts Disclosure Statement in compliance with the **CITY’S** Ethics Code.

- 9.4 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR'S** knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with the notice provisions set forth in Article VIII.
- 9.5 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm, in writing, that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.
- 9.6 **CONTRACTOR** warrants and certifies and this contract is made in reliance thereon that it has tendered to **CITY** an accurate Litigation Disclosure Statement.

X. INSURANCE

- 10.1 Prior to the commencement of any work under this Contract, **CONTRACTOR** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "**Sales and Use Tax Audit**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Contract until such Certificate and endorsements have been received and approved by the City's Finance Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 10.2 **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
- 10.3 A **CONTRACTOR'S** financial integrity is of interest to the **CITY**; therefore, subject to **CONTRACTOR'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **CONTRACTOR** shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at **CONTRACTOR'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

- 10.4 **CONTRACTOR** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **CONTRACTOR** herein, and provide a Certificate of Insurance and endorsement that names **CONTRACTOR** and **CITY** as additional insureds. **CONTRACTOR** 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 Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. **CONTRACTOR** shall be required to comply with any such requests and shall submit requested documents to **CITY** at the address provided below within 10 days. **CONTRACTOR** shall pay any costs incurred resulting from provision of said documents.

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

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

- Name 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 the **CITY** is an additional insured shown on the policy;
- Workers' compensation, employers' liability, auto liability and general 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.

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

10.8 In addition to any other remedies the **CITY** may have upon **CONTRACTOR'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **CONTRACTOR** to stop work hereunder, and/or withhold any payment(s) which become due to **CONTRACTOR** hereunder until **CONTRACTOR** demonstrates compliance with the requirements hereof.

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

10.10 It is agreed that **CONTRACTOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.

10.12 **CONTRACTOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION AND RELATED PROVISIONS

- 11.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONTRACTOR'S** activities under this Contract, including any acts or omissions of **CONTRACTOR**, any agent, officer, director, representative, employee, consultant or subcontractor of **CONTRACTOR**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 11.2 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONTRACTOR** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **CONTRACTOR** known to **CONTRACTOR** related to or arising out of **CONTRACTOR'S** activities under this Contract and shall see to the investigation and defense of such claim or demand at **CONTRACTOR'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONTRACTOR** of any of its obligations under this paragraph.
- 11.3 **CITY** shall have the right to select or to approve defense counsel to be retained by **CONTRACTOR** in fulfilling its obligation hereunder to defend and indemnify **CITY**, unless such right is expressly waived by **CITY** in writing. **CONTRACTOR** shall retain **CITY** approved defense counsel within seven (7) business days of **CITY'S** written notice that **CITY** is invoking its right to indemnification under this Contract. If **CONTRACTOR** fails to retain Counsel within such time, **CITY** shall have the right to retain defense counsel on its own behalf, and **RESPONDENT** 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.
- 11.4 In any and all claims against any party indemnified hereunder by any employee of **CONTRACTOR**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of

damages, compensation or benefits payable by or for **CONTRACTOR** or any subcontractor under worker's compensation or other employee benefit acts.

ARTICLE XII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

I. SBEDA Program

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

II. SBEDA Program Compliance – Affirmative Procurement Initiatives

The **CITY** has applied the following contract-specific Affirmative Procurement Initiatives (API) 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 necessary to attain satisfactory performance under this Agreement:

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

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

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, **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.

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

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

A. Solicitation Response and Contract Requirements and Commitment

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

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

III. 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 **CONTRACTOR** 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 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 7of 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** for this project have registered and/or maintained active status in the **CITY's** Centralized Vendor Registration System (CVR), and **CONTRACTOR** has represented to **CITY** which primary commodity codes each Subcontractor will be performing under for this contract. **CITY** recommends all Subcontractors to be registered in the CVR.

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

IV. 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

5. Disqualification of **FIRM** or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

V. 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.

VI. 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 **FIRM** until the **CITY's** audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

A. Definitions

Affirmative Procurement Initiatives (API) – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race-

and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

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

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

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

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

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

organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the Ordinance No. 2016-05-19-0367 Section III.E.6.

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

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

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

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

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

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

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

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

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

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

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

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility

requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult that is of legal majority age.

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

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

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

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

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

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

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case

of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

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

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

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

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

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

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

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

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

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

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

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

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

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

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (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.

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 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

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

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

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

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

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

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

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

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

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

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture

partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

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

XV. AMENDMENTS

- 15.1 Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both **CITY** and **CONTRACTOR**, and subject to approval by the City of San Antonio City Council, evidenced by passage of an ordinance.
- 15.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVI. LICENSES/CERTIFICATIONS

- 16.1 **CONTRACTOR** warrants and confirms that **CONTRACTOR** and any other person designated to provide services hereunder has and shall maintain the requisite training, license and/or certification to provide said services, and meets and shall continue to meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

- 17.1 **CONTRACTOR** shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XIII. OTHER AGREEMENTS

- 18.1 It is acknowledged and understood by the parties hereto that this Contract constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. It is also acknowledged and understood by the parties hereto

that with the execution of this Contract, the authorizing ordinance, and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CONTRACTOR** and contain all of the terms and conditions agreed upon.

XIX. SEVERABILITY

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

XX. LAW APPLICABLE

20.1 **THIS CONTRACT 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 Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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

EXECUTED and **AGREED** to this the _____ day of _____, 2021.

CITY:
CITY OF SAN ANTONIO

CONTRACTOR:
SALES TAX ASSURANCE, LLC,
d/b/a HdL Companies



Troy Elliott, CPA
Deputy Chief Financial Officer

Richard Fletcher
Vice President of Client Services
and Operations

Approved as to Form:

Robert K. Nordhaus
Assistant City Attorney