

PROFESSIONAL SERVICES CONTRACT

ACCOUNTS PAYABLE RECOVERY 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 her designee, and **PROFESSIONAL AUDITING SERVICES OF AMERICA, CO.**, a corporation chartered under the laws of the State of Michigan, acting herein through its Managing Audit Partner (hereinafter referred to as "**CONTRACTOR**"). **CITY** and **CONTRACTOR** are sometimes herein collectively referred to as the "Parties".

WHEREAS, the **CITY**, through its Finance Department, currently operates and maintains an Accounts Payable ("AP System"), through which all invoices received from City vendors for goods and services provided to the **CITY** are processed and through which payment of those invoices are disbursed; and

WHEREAS, the **CITY** desires to contract with a firm to perform a review and audit of the AP System for fiscal year 2015 ending September 30, 2015, to ensure that proper controls are in place and to review and determine the accuracy of payments to **CITY** vendors; and

WHEREAS, in response to Request For Proposal No. RFP 16-066 ("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 **PROFESSIONAL AUDITING SERVICES OF AMERICA, CO.**
- 1.2 "**Department**" means the City's Finance Department.
- 1.3 "**Director**" means the Director of the City's Finance Department.

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 VIII. Termination, in whole or in part, should **CONTRACTOR'S** work not be acceptable to the Director, in his sole, unfettered discretion.
- 2.6 **CONTRACTOR** shall perform the services set forth in **Exhibit 1**, which is attached hereto and made a part hereof for all purposes, within the time set forth in the RFP.
- 2.7 **CONTRACTOR personnel performing services.** At a minimum, the following persons will be assigned to perform the services to be performed by **CONTRACTOR** under this Contract: Roy D. Jackson, CPA; Michael Johnson; and Katie Judach. Each person will perform the tasks set out in **Exhibit 1**, and such other tasks as shall be assigned by **CONTRACTOR**. In addition, **CONTRACTOR** shall as necessary assign additional personnel to perform services under tasks Contract as is necessary to complete each task within the time set out in the RFP.
- 2.8 **CITY Authorizations.** As requested by **CONTRACTOR**, **CITY** will provide **CONTRACTOR** Letters of Authorization on **CITY'S** letterhead addressed to "To Whom It May Concern" allowing **CONTRACTOR** to request, receive and act on information from vendors that is related to the vendor's account(s) with **CITY**. **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.
- 2.9 The specific services to be performed by **CONTRACTOR** under this Contract are set forth in **Exhibit I**, which is attached hereto and incorporated herein for all purposes.

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 one (1) year, commencing on the date this Contract is fully executed by the Parties ("Commencement Date"). 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, 2016 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 in the initial term of the Contract, **CONTRACTOR** shall be entitled to twenty-one percent (21%) of actual revenues recovered and received by **CITY** as the direct result of **CONTRACTOR'S** work or recommendations.

If the Contract is renewed for its first renewal term, as sole compensation to **CONTRACTOR** for its services performed in accordance with the provisions of this Contract in the first renewal term of the Contract, **CONTRACTOR** shall be entitled to twenty percent (20%) of actual revenues recovered and received by **CITY**. as the direct result of **CONTRACTOR'S** work or recommendations.

If the Contract is renewed for its second renewal term, as sole compensation to **CONTRACTOR** for its services performed in accordance with the provisions of this Contract in the second renewal term of the Contract, **CONTRACTOR** shall be entitled to nineteen percent (19%) of actual revenues recovered and received by **CITY**. as the direct result of **CONTRACTOR'S** work or recommendations.

- 4.2 **CONTRACTOR'S** claims for commissions shall be submitted with documentation which includes actual revenue recovered detail by individual vendor, by month. The documentation shall provide a comprehensive, cumulative accounting of revenue recovered for which commissions are due.
- 4.3 Commissions payable to **CONTRACTOR** shall be determined and invoices shall be submitted by **CONTRACTOR** to **CITY** in arrears and only after **CITY** has received payment of the recovered revenue.
- 4.4 The maximum dollar amount of a commission payable to **CONTRACTOR** as the result of actual recovered revenue received by **CITY** from a specific *single* vendor claim shall be \$100,000.00.

- 4.5 Commissions due to **CONTRACTOR**, if any, shall be invoiced monthly to **CITY**, in a form substantially similar to the form set forth in **Exhibit II**, which is attached hereto and incorporated herein by reference for all purposes.
- 4.6 **CITY'S** commission obligations for prospective recovered revenues shall survive contract expiration or termination until those obligations are complete.

V. PERFORMANCE GUARANTEE

- 5.1 **CONTRACTOR** guarantees to **CITY** that **CITY** will receive actual recovered revenues within forty-five (45) days after **CONTRACTOR** begins its performance of services under this Contract.
- 5.2 In the event the performance guarantee set out above is not met, **CITY** will be entitled to a \$3,000.00 inconvenience payment from **CONTRACTOR**. This inconvenience payment will be paid by **CONTRACTOR** to **CITY** in the form of a credit to **CITY** against commissions due to **CONTRACTOR** in the first invoice submitted by **CONTRACTOR** to **CITY**.

VI. OWNERSHIP OF DOCUMENTS; INTELLECTUAL PROPERTY

- 6.1 In no event shall the Work Product be considered "work for hire" as the term is defined in the Uniform Commercial Code.
- 6.2 Notwithstanding anything contained to the contrary in this Contract or in **CITY'S** RFP 16-066 or other inclusions herein or 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.
- 6.3 Upon payment in full of all applicable fees, **CITY** shall receive and be the exclusive owner of all Deliverables and information, documents, writings and **CONTRACTOR** retains all the rights, title and interest in the processes, software, ideas, and know-how, whether patentable or proprietary that **CONTRACTOR** may develop or utilize in performing services for **CITY**.

VII. RECORDS

- 7.1 **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.

- 7.2 **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.
- 7.3 **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.

VIII. TERMINATION

- 8.1 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.
- 8.2 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 IX. Notice.
- 8.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article IX. 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:
- 8.3.1 The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XIV. Assignment and Subcontracting;
- 8.3.2 Any material breach of the terms of this Contract, as determined solely by City.
- 8.4 Defaults With Opportunity for Cure. Should **CONTRACTOR** default in the performance of this Contract in a manner stated in this section 8.4 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 IX. 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.

8.4.1 Failure to comply with the terms and conditions stated in Article XIII SBEDA.

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

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

8.4.4 Performing unsatisfactorily

8.5 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.

8.6 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.

8.7 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. Consistent with Section 4.2 herein, **CONTRACTOR** shall include with claims a listing of businesses or issues which **CONTRACTOR** has identified prior to completion or termination which may create a future claim for which **CONTRACTOR** is or will be entitled to monies owed after completion or termination. Monies due related to future claims may not be knowable at the time of completion or 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.

- 8.8 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.
- 8.9 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.

IX. NOTICE

- 9.1 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.

<u>If intended for CITY, to:</u>	<u>If intended for CONTRACTOR, to:</u>
City of San Antonio Finance Department Attn: Dawn Oppermann 111 Soledad, 4th Floor San Antonio, Texas 78205 or P.O. Box 839966 San Antonio, Texas 78283-3966	PROFESSIONAL AUDITING SERVICES OF AMERICA, CO. Attn: Roy D. Jackson, CPA 29193 Northwestern Highway, Suite 643 Southfield, MI 48034

X. CONFLICT OF INTEREST

- 10.1 **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.
- 10.2 **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.

- 10.3 **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.

- 10.4 **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 IX. Below.
- 10.5 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.
- 10.6 **CONTRACTOR** warrants and certifies and this contract is made in reliance thereon that it has tendered to **CITY** an accurate Litigation Disclosure Statement.

XI. INSURANCE

- 11.1 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 "**Accounts Payable Recovery Audit Services**" 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.
- 11.2 **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.
- 11.3 **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:

<u>TYPE</u>	<u>AMOUNTS</u>
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	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for	\$500,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as

no less than two years subsequent to the completion of the professional service.	damages by reason of any act, malpractice, error, or omission in professional services.
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- 11.4 **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.
- 11.5 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

- 11.6 **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.

- 11.7 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.
- 11.8 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.
- 11.9 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.
- 11.10 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.
- 11.11 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.
- 11.12 **CONTRACTOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XII. INDEMNIFICATION AND RELATED PROVISIONS

- 12.1 **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.

- 12.2 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.
- 12.3 **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.
- 12.4 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 XIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

A. SBEDA Program

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

referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

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

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of

an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by **CONTRACTOR** to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the **CITY** as fraudulent if **CONTRACTOR** attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the **CONTRACTOR** shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the **CONTRACTOR** and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

Good Faith Efforts – documentation of the **CONTRACTOR’s** or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of **CONTRACTOR’s** Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

Individual – an adult person that is of legal majority age.

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

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

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

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

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

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

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

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

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

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the **CONTRACTOR**.

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

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

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

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

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

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

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (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 S/M/WBE Program.

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

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

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

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the **CITY's** S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of **CONTRACTOR's** and/or S/M/WBE firm's performance and payment under **CITY** contracts due to the **CITY's** imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

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

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%)

owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

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

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

Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by **CONTRACTOR** of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

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

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

E. 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.

F. Prompt Payment

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

G. Violations, Sanctions and Penalties

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

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

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

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

XIV. ASSIGNMENT AND SUBCONTRACTING

- 14.1 **CONTRACTOR** shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of **CONTRACTOR**. **CONTRACTOR**, its employees or its subcontractors shall perform all necessary work.
- 14.2 It is **CITY'S** understanding and this Contract is made in reliance thereon that **CONTRACTOR** intends to use the following subcontractors in the performance of this Contract: **NONE** Any deviation from this subcontractor list, whether in

the form of deletions, additions or substitutions shall be approved by Director, or designee prior to the provision of any services by said subcontractor.

- 14.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the **CITY**, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of **CONTRACTOR**. **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONTRACTOR**, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director, or designee.
- 14.4 Except as otherwise stated herein, **CONTRACTOR** may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director, as evidenced in writing. As a condition of such consent, if such consent is granted, **CONTRACTOR** shall remain liable for completion of the services outlined in this Contract in the event of default by the successor **CONTRACTOR**, assignee, transferee or subcontractor.
- 14.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONTRACTOR** assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, **CITY** may, at its option, cancel this Contract and all rights, titles and interest of **CONTRACTOR** shall thereupon cease and terminate, in accordance with Article X. Termination, notwithstanding any other remedy available to **CITY** under this Contract. The violation of this provision by **CONTRACTOR** shall in no event release **CONTRACTOR** from any obligation under the terms of this Contract, nor shall it relieve or release **CONTRACTOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

XV. INDEPENDENT CONTRACTOR

- 15.1 **CONTRACTOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**. The doctrine of respondent superior shall not apply as between **CITY** and **CONTRACTOR**, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between **CITY** and **CONTRACTOR**. 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 **CONTRACTOR** under this Contract and that **CONTRACTOR** have no authority to bind **CITY**.
- 15.2 Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by **CITY**, what instruction or direction is provided by **CITY**,

CONTRACTOR, and those persons designated by it to provide services shall not be deemed employees of **CITY**, and shall not be entitled to wages or benefits from **CITY**, other than the compensation provided herein.

XVI. AMENDMENTS

- 16.1 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.
- 16.2 The parties hereto understand and agree that any request by the **CITY** to provide the Optional Service describe in ARTICLE V. OPTIONAL SERVICE shall not constitute an amendment to the provisions of this Contract.
- 16.3 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.

XVII. LICENSES/CERTIFICATIONS

- 17.1 **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.

XVIII. COMPLIANCE

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

XIX. OTHER AGREEMENTS

- 19.1 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.

XX. SEVERABILITY

- 20.1 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.

XXI. LAW APPLICABLE

- 21.1 **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.**

- 21.2 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.

XXII. LEGAL AUTHORITY

- 22.1 The signer of this Contract for **CONTRACTOR** represents, warrants, assures and guarantees that she 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.

XXIII. PARTIES BOUND

- 23.1 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.

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XIV. CAPTIONS

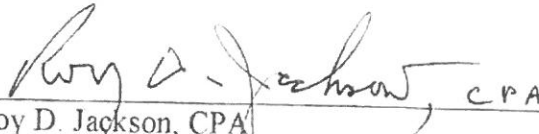
24.1 The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

EXECUTED and AGREED to this the _____ day of _____, 2016.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
PROFESSIONAL AUDITING SERVICES
OF AMERICA, CO.

Troy Elliott, CPA
Finance Director



Roy D. Jackson, CPA
Managing Audit Partner

Approved as to Form:

Robert K. Nordhaus
Assistant City Attorney

EXHIBIT I

EXHIBIT I – SCOPE OF SERVICES

It is the City of San Antonio's (COSA) desire to contract with PAS (the Contractor) to perform a review and audit of fiscal year 2015's disbursements to ensure payments issued were accurate and complete. There is the potential to review and audit additional years' city records at COSA's discretion. COSA's fiscal year ends on September 30. The Contractor will assess and audit, at a minimum, the following:

- Propriety of Vendor Master Data
- Duplicate Supplier Payments
- Wrong Supplier Payments
- Wrong Payment Amounts
- Unidentified Credits
- Unapplied Credits
- Supplier Deposits
- Missed Cash Discounts/Rebates
- Escheatment / Outstanding Check Review
- Potential Sales Taxes Paid
- Contract Compliance
- Payment/Credit for Returned Goods
- Payment for Wrong Quantity or Unit Price/Invoice Overcharges
- General Savings Opportunities including Invoice Process Flow Improvements

In addition, the Contractor will coordinate with COSA vendors/suppliers to correct appropriate records in order to ensure recovery to COSA. The Contractor must provide written reports on a monthly basis on the findings and results of the ongoing examination.

It will be the Contractor's responsibility to assure compatibility of COSA and Contractor's data files and transmittal medium to the Contractor's computer system. The Contractor shall bear all costs, if any, for data conversion and any incidental costs related to data transfer.

COSA currently has a contract for payment recovery services for telecommunications services. These services therefore are not part of the scope of services for this contract.

All information provided by COSA and its vendors/suppliers to the Contractor shall be kept confidential and not disclosed to parties other than the Contractor's employees on a need-to-know basis for the purpose of contract performance, without prior written consent of COSA.

At a minimum, the Contractor shall conduct tests to ensure that all possible duplicate payments, overpayments, and fraudulent or inappropriate payments to suppliers have been identified. The following represent various examples of such tests:

- Identifying invoices without purchase orders
- Determining whether accurate vendor rebates were obtained
- Identifying invoices with duplicate purchase order numbers
- Finding discounts not taken
- Identifying invoices without a valid purchase order
- Comparing terminated contracts to subsequent payments

- Identifying multiple invoices with the same item description
- Extracting suppliers with duplicate invoices
- Identifying multiple invoices for the same amount on the same date
- Finding invoice payments issued on non-business days – Sat/Sun/holidays
- Comparing vendor data to the employee master file data
- Reconciling check registers to disbursements by vendor invoice
- Identifying debit balances
- Identifying old invoices
- Testing for duplicate bank account details
- Comparing monthly expenses to paid invoices
- Scrubbing the vendor master file for duplicate vendors

The Contractor shall provide a **Dashboard** available to COSA as an easy to read, single page, real-time user interface, showing a graphical presentation of the current status (snapshot) of the recovery progress, supplier trends and key performance indicators that ultimately enable instantaneous and informed decisions to be made at a glance.

The **Dashboard** should be displayed via a secure portal on the Contractors web page that is linked to a database which allows the report to be constantly updated in real-time. The **Dashboard** would allow authorized users to see the high-level recovery process and then drill down into low level data and documentation, if desired.

The Contractor shall transfer knowledge, at the conclusion of each audit. Examples include but are not limited to the amount of recoveries identified and collected, a list of internal control recommendations to strengthen the procure-to-pay process, cost avoidance/reduction recommendations (i.e., reducing the high volume of invoices being presented for payment) and other recommendations to include Vendor Master Data File cleanup and organizational changes.

The Contractor shall complete a contract compliance audit (contract allowances, rebates, pricing verification, etc.) that would include a request for more detailed purchase order/invoice line item detail at a UPC code level. The Contractor will provide a file layout of exactly what information would be desired, as it relates to what information is generally needed from the City Project Manager/Designee and in what format that data would typically be required.

While simultaneously performing detailed independent contract compliance testing, the Contractor will also assist **COSA** in maximizing its contract portfolios and reducing commodity costs by identifying product and contract conversion, price leveling, and supplier consolidation opportunities.

The Contractor will also apply other Proprietary Price Compliance Testing Strategies would include the following:

1. Generate a detailed material purchases exception report with prices that exceed 25% of the median/average price.

2. Generate a detailed material purchases exception report with the highest material purchase price ever to the next highest purchase price ever by material item.
3. Generate a detailed material purchases exception report with the highest material purchase quantity ever to the next highest purchase quantity ever by material item.

A client situational analysis will also be performed and would therefore entail up-front interviews with various client personnel to conduct a self-assessment (using questionnaires), including the following:

1. Review a list of potential fraud types within Procurement and Accounts Payable.
2. Assess the impact and likelihood of each fraud occurring at the COSA. This would best be done by reviewing the accounts payable data values and volumes. It can also be supplemented by going over any prior COSA fraud history.
3. Determine the “Governance, Risk Management and Compliance” that exist to prevent or otherwise mitigate the fraud risk.
4. Consider COSA’s desire to detect certain fraud.

E X H I B I T I I

PAS may submit invoices in a variety of formats, however typically our invoices are submitted in electronic PDF format, with all supporting documentation attached, per recovery:



Date: August 1, 2016
To: Mr. Troy Elliott, CPA
(Finance Director)
From: (Roy Jackson, CPA)
Professional Auditing Services of America
Subject: Additional Supporting Detail for Checks Received
for the Third (3rd) Invoice for CLIENT ABC Per
CONTRACT # 2-178323-00

We are pleased to inform you that through 8/1/16, we have actually identified/recovered \$201,150.76 for CLIENT ABC for services rendered as of August 1, 2016. We are working diligently with the remaining suppliers to bring in the remaining dollars that we believe are outstanding and owed to CLIENT ABC.

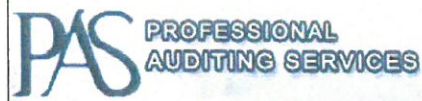
Please find the following items enclosed within this package:

- 1.) A summary schedule of Checks Refunded and Received pertaining to supplier recoveries.
- 2.) Professional Auditing Services' **Third (3rd)** Original Invoice.

PAS would also like to extend a sincere and warm thank-you, to both you and your support staff for allowing PAS the opportunity to provide its recovery service to CLIENT ABC.

If you have any questions regarding the enclosed, you or your accounts payable lead person may contact me (Roy Jackson) by telephone toll free at (800) 353-3050 or cell (248) 514-4168 or office (248) 254-1705 or fax (248) 239-0705, or e-mail at roy@pas-cash.com / royjackson3@cs.com.

Thank you once again for being our valued client.



AUGUST 1, 2016
INVOICE# ABC1415-3
CONTRACT # 2-17833-01

TO: CLIENT ABC
ATTN: CLIENT NAME
(FINANCE DIRECTOR)
P.O. BOX 839966
SAN ANTONIO, TX 78283-3966

FOR: THIRD PAYMENT FOR RECOVERY AUDIT
(PROCUREMENT CYCLE)
FISCAL YEAR 2015- CoSA

RE: INVOICE FOR ACCOUNTS PAYABLE AUDIT

CLAIMS IDENTIFIED AND SERVICES RENDERED PRIOR TO 8/1/16:

CHECKS RECEIVED:	\$ 17,743.83
CREDIT MEMOS RECEIVED:	\$ 00.00
TOTAL CLAIMS RECOVERED	\$ 17,743.83

NET CLAIMS TO BE BILLED	\$ 17,743.83
PAS's SHARE AT 21.0%	\$ 3,726.20

AMOUNT DUE, AS AGREED AS OF 8/1/16:	\$ 3,726.20
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PLEASE REMIT VIA ACH TO:

PROFESSIONAL AUDITING SERVICES OF AMERICA
29193 NORTHWESTERN HWY., STE. 643
SOUTHFIELD, MI. 48034-1024

(EIN # 30-0843154)

TERMS: NET 15 DAYS — PLEASE

THANK-YOU FOR BEING OUR VALUED CLIENT

PROFESSIONAL AUDITING SERVICES OF AMERICA
"OUR NAME SAYS IT ALL"

CLIENT ABC
INVOICE # 3 - SUPPORTING DETAIL FOR AUDIT
(ARRANGED BY- CLAIM NUMBER)
FOR THE PERIOD ENDING, SEPTEMBER 30, 2015

CLAIM #	TYPE	VENDOR NAME	ORIG. AMT.	COLLECTED 6/1/2016	COLLECTED 7/1/2016	COLLECTED 8/1/2016	COLLECTED 9/1/2016	NOT COLLECTED
ABC1415001	601	ALLEY-CASSETTY TRUCK CENTER	\$ 3,899.03	\$ 3,899.03				
ABC1415002	601	TN FILTER SALES CO	145.92					
ABC1415003	706	EAST PENN OF NASHVILLE	16,327.63		\$ 16,327.63			
ABC1415004	706	MID SOUTH BUS CENTER	256.33					
ABC1415005	803	DELL MARKETING LP	11,544.45	11,544.45				
ABC1415006	803	GIRTMAN & ASSOCIATES	3,290.00		3,290.00			
ABC1415007	803	CHILDREN'S PLUS INC	791.08	791.08				
ABC1415008	803	STEINHOUSE SUPPLY CO	759.91	759.91				
ABC1415009	803	BAKER & TAYLOR INC	572.21			\$ 572.21		
ABC1415010	803	BEST ONE TIRE	548.10					
ABC1415011	803	O'REILLY AUTO PARTS	327.57					
ABC1415012	803	MID SOUTH BUS CENTER	252.95					
ABC1415013	803	CENGAGE LEARNING	212.50		212.50			
ABC1415015	201	GCA SVCS GRP	\$ 132,570.35	\$ 132,570.35				
ABC1415016	201	ED'S SUPPLY COMPANY INC.	1,056.18		1,056.18			
ABC1415017	601	BRIDGES	2,328.03		2,328.03			
ABC1415018	601	SANDERS INDUSTRIAL SUPPLY CO	529.22		529.22			
ABC1415019	706	MECHANICAL RESOURCE GROUP	4,544.00			4,544.00		
ABC1415020	706	ALLEY-CASSETTY TRUCK CENTER	1,467.54			1,467.54		
ABC1415021	803	PEARSON EDUCATION	10,847.65			10,847.65		
ABC1415022	803	SCHOLASTIC INC	4,486.87		4,486.87			
ABC1415023	803	MID TENN FORD TRUCK SALES	4,190.43		4,190.43			
ABC1415024	803	CAMBIUM LEARNING	1,421.25		1,421.25			
ABC1415025	803	ACT	397.00					
ABC1415026	803	PHONAK	231.61			231.61		
ABC1415027	803	CDW GOVERNMENT INC	122.98					
ABC1415028	803	ADECCO	113.20					
ABC1415029	803	FOLLETT EDUCATIONAL	105.70					105.70
ABC1415030	803	SHERWIN-WILLIAMS	80.82			80.82		
TOTAL			\$ 203,420.51	\$ 149,564.82	\$ 33,842.11	\$ 17,743.83	\$ -	\$ -
PAS SHARE @ 21% (AS OF AUGUST 1, 2016) FOR SERVICES RENDERED				\$31,408.61	\$7,106.84	\$3,726.20	\$0.00	
TOTAL DUE PER AGREEMENT				\$31,408.61	\$7,106.84	\$3,726.20	\$0.00	

CLIENT ABC

SCHEDULE OF CHECKS REFUNDED - #3 (SORTED BY- VENDOR NAME) FOR THE PERIOD ENDING, AUGUST 1, 2016

CLAIM #	TYPE	VENDOR NAME	AMOUNT	STATUS	RESOLUTION
ABC1415020	706	ALLEY-CASSETTY TRUCK CENTER	\$ 1,467.54	P	CK #10779, DATED 04/29/15
ABC1415009	803	BAKER & TAYLOR INC	572.21	P	PER CLIENT, CK REC'D
ABC1415019	706	MECHANICAL RESOURCE GROUP	4,544.00	P	PER CLIENT, CK REC'D
ABC1415021	803	PEARSON EDUCATION	10,847.65	P	PER CLIENT, CK REC'D
ABC1415026	803	PHONAK	231.61	P	CK #112497, DATED 04/09/15
ABC1415030	803	SHERWIN-WILLIAMS	80.82	P	PER CLIENT, CK REC'D
		TOTAL	\$ 17,743.83		

