

**SERVICES CONTRACT  
FOR  
SECURING STRUCTURES & CLEARING LOTS**

STATE OF TEXAS                   §  
   §  
COUNTY OF BEXAR           §

This Contract is entered into by and between City of San Antonio, a Texas Municipal Corporation (“City”), on behalf of the Development Services Department (the “DSD”), pursuant to Ordinance No. 2017-\_\_-\_\_, passed and approved on the \_\_ day of \_\_, 2017, and \_\_\_\_\_, (“Contractor”), each of which may be referred to herein as a “Party” and collectively as the “Parties”.

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**

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

- 1.1 “City” is defined in the preamble of this Contract and includes its successors and assigns.
- 1.2 “Contractor” is defined in the preamble of this Contract and includes its successors.
- 1.3 “Director” shall mean the Director of DSD.
- 1.4 “Debris” shall be categorized and defined as set out below:
  - 1.4.1 “Light Debris” – Shall include, but not be limited to, grass clippings, high weeds (more than twelve (12) inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.
  - 1.4.2 “Moderate Debris” – Shall include, but not be limited to, trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, household items (e.g., dishes, tableware, pots and pans, etc.) etc.
  - 1.4.3 “Heavy Debris” – Shall include, but not be limited to, appliances, toilets, furniture, tires, tree trunks, tree limbs, branches, etc.
  - 1.4.4 “Extra Heavy Debris” – Shall include, but not be limited to, discarded lumber, construction building materials, bricks, gravel, dirt mounts, big rocks, etc.
  - 1.4.5 “Excessive Heavy Debris” – Shall include, but not be limited to, accumulation of construction materials or debris piles that are pervasive to the property (spread throughout the front, side, rear, or combination of areas, of the property), etc.
- 1.5 “DSD” is defined in the preamble of this Contract and includes any successor department.

## II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on \_\_\_\_\_, the effective date of its authorizing ordinance, and terminate on \_\_\_\_\_, 2018.

2.2 City reserves the right to extend this Contract period for four (4) additional one (1) year periods based on the initial bid submitted, at City's option. Renewals shall be in writing and signed by the Parties. The City Manager, or her designee, shall be the party with authority to execute a renewal on behalf of City, without further action by City Council, subject to and contingent upon appropriation of funds therefor.

2.3 City additionally reserves the right to extend the term of this Contract in thirty (30) day increments, not to exceed ninety (90) days total with written notice to Contractor; provided, that City shall give Contractor a preliminary written notice of its intent to extend at least ten (10) days before this Contract expires. The Parties agree and understand that the preliminary notice does not commit City to an extension.

2.4 If funding for this entire Contract is not appropriated at the time this Contract is entered into, City retains the right to terminate this Contract at the expiration of each of City's budget periods, and any subsequent Contract period is subject to and contingent upon such appropriation.

## III. SCOPE OF SERVICES

3.1 Required Equipment. Contractor is required to maintain or obtain, at a minimum, the equipment listed below, as needed for the performance of the work required by this Contract. All equipment must be equipped with safe guards as outlined by American National Standards Institute (ANSI) and Occupational Safety & Health Administration (OSHA). Equipment shall be the size and type customarily used in work of this kind and no equipment shall be used which is harmful to the areas being serviced. All equipment must be in good working condition at all times. Contractor may rent or lease equipment if not owned. Equipment shall be available at the start of this Contract and throughout this Contract's term. City will not be responsible for costs associated with the purchase, upkeep or rental of equipment to satisfy the work under this Contract.

Tractor, 19 hp & less	Edger
Tractor, greater than 19 hp	String Trimmer
Commercial ride-on mower	Leaf Blower
Commercial stand-on mower	Refuse Trailer
Dump Truck	Front End Loader
Chainsaw	15' Batwing Mower

### 3.2 Other Requirements.

3.2.1 Contractor shall have a valid City Tree Maintenance License for the entirety of this Contract.

- 3.2.2 Contractor shall have mobile communication and a working email address for communication with the City at all times during the term of this Contract.
- 3.2.3 Contractor shall have a laptop or tablet capable of viewing documents, and shall have access to Adobe Reader and the capacity to view and edit Microsoft Office documents such as Word, Excel, and PowerPoint.

3.3 Delivery of Services. Contractor agrees:

- 3.3.1 To provide City-wide lot-clearing and structure-securing services twenty-four (24) hours a day, seven (7) days a week, three hundred sixty five (365) days a year, including holidays, for the duration of this Contract.
- 3.3.2 That normal work hours will be Monday through Friday, 6:30 AM to 5:00 PM.
- 3.3.3 That any emergency services requested will be billed at the normal rate plus the emergency mobilization fee specified in Exhibit A – Price Schedule.
- 3.3.4 That non-emergency work will be completed during normal work hours, unless written permission is received from the DSD Supervisor or DSD Code Enforcement Officer to extend the non-emergency work beyond normal work hours.
- 3.3.5 To give “priority” service to any call for services in City.
- 3.3.6 That response times for lot clearing and structure-securing services not considered by City as an “emergency” will be completed within three (3) business days of receiving the call.
- 3.3.7 That City, DSD Supervisor or DSD/Code Enforcement Officer shall have the authority to designate a matter as an emergency response for a matter of public or personal safety. City reserves the right to determine when a call is considered an “emergency”.
- 3.3.8 That a call for emergency services must be answered within two (2) hours of receiving such call and the associated work completed the same day.
- 3.3.9 That work that cannot be completed within the mutually agreed upon time frame must be approved in advance by City, DSD Supervisor or DSD/Code Enforcement Officer. City, or its designee, reserves the right to terminate the work order with Contractor and solicit outside quotes if the required time frame cannot be met.
- 3.3.10 That all unique requirements and or regulations for each location shall be strictly followed by Contractor and its employees. Contractor agrees that Contractor’s personnel shall make contact with the DSD Supervisor or the DSD Supervisor’s authorized representative to inform them of their presence, and the purpose of their visit prior to performing any work.
- 3.3.11 That City shall review and test Contractor’s work and confirm it is acceptable

and in compliance with this Contract. The determination of acceptance shall be within the sole discretion of City.

3.3.12 That Contractor shall assist with warrants to remove door(s) to allow City staff to access the interior of a structure and then re-secure the door(s) upon completion of the interior inspection. City staff will coordinate with Contractor approximately forty-eight (48) hours in advance and indicate that assistance with warrant(s) is needed. Contractor is required to have personnel available to assist with these types of requests, payable as securing of doors as set forth in Exhibit A – Price Schedule.

3.4 Services. Contractor agrees that it will provide the services described and set out below:

3.4.1 Clearing Parcels.

- a. Contractor will pick up and legally dispose of any and all size of brush, tree limbs, trees, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor will remove and legally dispose of all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site. The price set forth in Exhibit A – Price Schedule includes all charges for labor related to removing these items from a location.
- b. Assigned work locations shall be cleared from the middle of the alley to the curb line of the street and from side property line to side property line.
- c. Dead trees and/or limbs will be cut, trimmed and removed from a property consistent with the recommendation of the Code Officer and DSD Supervisor, and approval by City Arborist.
- d. Lots three (3) acres and less will be cut and cleaned, and debris will be removed completely unless otherwise specified by the Code Officer or Supervisor.
- e. Lots larger than three (3) acres will be cut and cleaned, and debris will be removed, according to the Code Officer's specifications.

3.4.2 Mowing and Tree Removal.

- a. Mowing height shall be less than three (3) inches. Plant material and grass clippings that result from mowing/trimming must be removed. All paved areas, including sidewalks, curbs, gutters, and streets, must be free of all plant material and clippings. Extreme care must be taken to prevent injury and damage to property. All areas must be left in a clean condition.
- b. Tree(s) may not be removed unless prior written authorization has been provided by the Code Officer and City Arborist. The work order from City will indicate if any trees are to be removed. The Code Office will provide final direction as to which trees are to be removed.

3.4.3 Securing Structures.

- a. Any accessible doors or windows shall be boarded and secured, including windows and doors with burglar bars, unless otherwise specified on work order.
- b. The following material shall be used to secure structures and all material shall be new: 5/8" CDX plywood, 2" X 4" lumber, 3/8" carriage bolts with nuts and washers and screws.
- c. Plywood shall extend past jambs and have bolts and nails at 6" spacing around the outside of the opening.
- d. Plywood on the front door opening will not include bolts, but will include only screws at 6" spacing around the outside of the opening.
- e. All first floor openings 4' X 8' or smaller require a solid sheet of plywood (no splicing) unless specified otherwise on the work order. All plywood shall be painted solid white or gray.
- f. Only first floor openings larger than 4' X 8' shall be considered for splicing. All splicing shall use only lumber, plywood, bolts and nails, and all splices shall be fastened as approved by City. All lumber and plywood shall be painted solid white or gray.

3.4.4 Graffiti Abatement.

- a. All structures, objects and/or fences that have been vandalized with graffiti shall be painted as indicated in the work orders.
- b. The following materials will be used to paint graffiti: (i) solid white paint, solid grey paint, or, upon request of City, colored paint must be used to match the structure's existing color; and (ii) for exterior surfaces, exterior latex paint suitable for various exterior surfaces.

3.5 All work performed is subject to inspection and approval by City, and any modification to these specifications must be in writing from the Director or his designee. Unsatisfactory work shall be redone by Contractor at Contractor's expense. City shall not pay for unsatisfactory work. Failure to perform satisfactory work may result in termination of this Contract in whole or in part.

3.6 Contractor shall provide training for its employees and any subcontractors in Contractor's best practices, safety and procedures, including properly transporting and disposing of debris.

3.7 Contractor shall control site safety and security at all times of actual working conditions and provide any safety equipment including, but not limited to, barricades tape or other means to control access to limit unauthorized persons for the safety of the public and City staff while performing services. Contractor shall be prohibited from posting signs which advertise its business at the designated sites without prior written authorization from City. Costs associated with site security and safety are considered incidental to the project and will not be considered for reimbursement. Work methods and

quality control measures are the responsibility of Contractor. However, at its discretion, City reserves the right to disapprove or suspend work methods considered unsafe, illegal, or detrimental to the project, the public health, safety, or welfare.

3.8 Contractor shall assume full responsibility and liability for and act prudently in all aspects of handling, transport and disposal of any hazardous materials, securing any licenses and permits required by law and ensuring that any disposal facility to which any scrap, waste or hazardous materials may be moved are in compliance with federal, state, and local laws and regulations. It shall be the responsibility of Contractor to remove from the job site and properly dispose of all refuse at the end of each workday. Contractor is prohibited from salvaging and/or recycling any materials generated or found within the project site. Materials and equipment left on site overnight shall be clearly marked and identified so as to ensure public safety. No materials or equipment can be placed on, or moved to, private property or neighboring sites without approval of the property owner and City. No materials or equipment shall be left on site over a weekend unless arrangements have been made with and approved by City. At its own risk, Contractor shall be responsible for any materials or equipment left on site. Any loss of materials or equipment due to theft, vandalism, etc. shall be the responsibility of Contractor.

3.9 All waste materials, including any and all tires (new or used), any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish removed from the location specified on the work order, shall be transported by a City-authorized and City-permitted hauler to an authorized disposal facility as described in this section and in compliance with all applicable regulations and local permitting requirements. Transports shall be insured, licensed, and permitted by federal, state and local agencies, as appropriate for the waste material that is to be hauled. Prior to commencing work, Contractor and its subcontractors, if any, shall provide proof of all required licenses and permits. Transport vehicles shall be in good working condition. All loads must be covered with a tarp or other suitable means to prevent dispersion of waste materials. City reserves the right to order transporters removed from the site if the vehicle is not in good working condition, lacks a local permit, or does not have a cover, or for any other reason City deems necessary to either ensure compliance with the contract or health and safety concerns. All transporters shall haul waste material directly to the disposal facility from the demolition site and shall not spill or track mud, dirt, or waste on the street in route to the disposal facility.

3.9.1 All waste must be disposed of at an authorized landfill permitted by the State to accept such waste. Contractor shall show proof of current authorization for disposal at licensed and permitted landfill(s). Waste containing non-regulated asbestos-containing material may be disposed of at a Type I or Type IV landfill (as defined by the Texas Administrative Code) authorized to accept such waste. Waste that may contain regulated asbestos-containing material shall only be disposed of at a Type I landfill authorized to accept such waste. Receipts for disposals shall be kept on file at Contractor's office for no less than three (3) years, and for so long as any unresolved transport manifest issue may be pending as a regulatory enforcement action. The receipts shall be available for City inspection during such times.

3.9.2 Contractor shall manifest all waste material that is required to be manifested. Contractor shall prepare all manifests, as necessary, and arrange for any special waste authorizations with the state or disposal facility for disposal. All coordination with the state and the disposal facility for disposal approval shall be Contractor's responsibility. Unless alternative written direction is provided by City and agreed to by Contractor, the City department requesting the service is the generator for the wastes identified in the work orders. City Inspector or other

authorized City representative will sign all manifests as the generator. Contractor or Contractor's transporter shall sign the manifest as the Transporter. The disposal facility shall sign the manifest upon acceptance at the disposal facility, and the original signed manifest shall be promptly returned to City. Manifests not returned to City within the designated state and federal timelines, will prompt City to make the appropriate Texas Commission of Environmental Quality (TCEQ) or U.S. Environmental Protection Agency (EPA) exception report. Payment will not be made until the original manifest is returned to City. It shall be Contractor's responsibility to locate delinquent manifests. Contractor shall be fully responsible and liable for all consequential regulatory liability, third party, and City damages that may arise or be asserted on account of un-manifested or delinquent manifested wastes.

3.10 Contractor shall ensure that all Contractor's personnel, including all subcontractors, wear uniforms and an identification badge at all times.

3.11 At City's request, Contractor may be requested to conduct employee background checks, to the extent allowable by law, including, at a minimum, references and prior employment histories to the extent necessary to verify representations made by said employees relative to their employment in the preceding (5) five years.

3.12 Performance Requirements.

- 3.12.1 Contractor shall be notified via email of pending work orders. Non-emergency response work must be completed within three (3) business days from receipt of work order(s), weather permitting. Contractor must communicate any anticipated delays with the assigned Code Officer.
- 3.12.2 An emergency response is when any lot clearing and securing of structures is a matter of public or personal safety and is determined as an emergency by City. A request for an emergency response must be answered within two (2) hours of receiving notification from City. Work associated with an emergency response shall be completed the same day as requested by City.
- 3.12.3 All Code Enforcement Officers are required to take "before" photos for lot abatements within three (3) days before work commences by Contractor. Contractor must communicate via email or telephone with the Code Officer so that Code Officer may obtain "after" photos within twenty-four (24) hours of work having been completed. If no communication is established, penalties in the form of demerits shall be issued according to the current DSD policy. Payment will not be processed if both sets of photos are not available.
- 3.12.4 Unsatisfactory work shall be redone at Contractor's expense. Continued unacceptable work is cause for suspension or permanent removal of Contractor.

3.13 The price for removal of debris in the categories identified in this Contract will include all charges for labor related to clearing these items from a location. No additional fees for labor will be accepted or paid. If the Code Enforcement Supervisor determines that a particular location meets the

criteria for “Excessive Heavy Debris”, then a disposal cost can be paid if authorized by DSD in advance of work taking place. The Code Enforcement Supervisor will identify the amount of debris to be removed (in cubic yards) and Contractor will provide a disposal invoice (receipt) upon disposal. The cost per load from Respondent will include all labor associated with removal of the excessive debris and disposal. The cost per load must be based on use of a roll-off dumpster (thirty (30) cubic yards). If the location also requires mowing, then the “Cut/Clean and/or No Debris” cost will be included in the work order.

3.14 Contractor agrees that City shall be the sole judge of Contractor’s performance and its decision shall be final.

#### **IV. COMPENSATION TO CONTRACTOR**

4.1 In consideration of Contractor’s performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Contract, City agrees to pay Contractor an amount not to exceed the prices shown on Exhibit A – Price Schedule, which is attached hereto and incorporated herein for all purposes. All payments made hereunder are subject to and contingent upon appropriations by City Council. Contractor agrees that failure to appropriate sufficient funds for this Contract shall not be considered a breach of this Contract. In the event that sufficient funds are not appropriated for this Contract, this Contract shall immediately terminate.

4.2 Contractor shall submit monthly invoices to City at the address shown on the work order(s). Invoices shall include each work order number, and separately identify and itemize the cost for each property being billed on the invoice. Contractor shall provide different or additional information on an invoice, if required by City.

4.3 City shall pay approved invoices that are properly completed and addressed within thirty (30) days of receipt. Invoices shall be considered paid on the date mailed.

4.4 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties hereby agree that all compensable expenses of Contractor have been provided for in Exhibit A. Total payments to Contractor cannot exceed that amount set forth in Exhibit A, without prior approval and agreement of all Parties, evidenced in writing and approved by the Director.

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

#### **V. [RESERVED]**

#### **VI. OWNERSHIP AND LICENSES**

6.1 In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of



Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

6.2 The term “local government record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

6.3 Contractor acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by this Contract, will belong to and be the property of City and shall be provided to City upon request. Contractor shall not under any circumstances release any records created during the course of performance of this Contract to any individual or entity without City’s written permission, unless required to do so by a court of competent jurisdiction.

## **VII. TERMINATION**

7.1 For purposes of this Contract, “termination” of this Contract shall mean termination by expiration of this Contract’s term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by City for convenience upon ten (10) days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. This Contract may be terminated in whole or in part by City for a material breach of its terms upon the date stated in a written notice, which notice shall be provided in accordance with Article VIII. Notice. The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting, shall be considered a material breach. Additionally, the commencement of any criminal investigation or the prosecution of any employee of Contractor, or of Contractor itself, by a local, state or federal law enforcement or regulatory agency shall be considered a material breach of this Contract.

7.4 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.

7.5 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:

City of San Antonio  
Attn: Director of Code Enforcement Services Department  
Code Enforcement Services Dept.  
P.O. Box 839966  
San Antonio, TX 78283-3966.

If intended for Contractor, to:

*[Insert Contractor contact information]*

**IX. [Reserved]**

**X. INSURANCE**

10.1 Prior to the commencement of any work under this Contract, Contractor shall furnish a completed Certificate(s) of Insurance to City's Office of Risk Management which shall be clearly labeled "**Dangerous Premises Abatement - Lot Clearing and Securing of Structures**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The Certificate(s) or form must have the agent's signature and phone number, and be mailed directly from the agent to City. City shall have no duty to pay or perform under this Contract until such Certificate shall have been delivered to City's Office of Risk Management, and no officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

10.2 City reserves the right to review these insurance requirements during the effective period of this Contract and any extension or renewal thereof 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, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 Contractor's financial integrity is of interest to City, and, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect, for the duration of this Contract, and any extension thereof, 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

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 an additional insured. 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 this Contract for all purposes.

10.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies. Contractor shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided below by City within ten (10) days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

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

10.6 Contractor agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- 10.6.1 Name City and its 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 City, with the exception of the workers' compensation and professional liability policies;
- 10.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;

- 10.6.3 Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of City; and
- 10.6.4 Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) days advance notice for nonpayment of premium.

10.7 Within five (5) days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend 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 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, City shall have the right to order Contractor to stop work under this Contract, and/or withhold any payment(s) which become due to Contractor there under 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 City 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 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**

**11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, City and the elected officials, employees, officers, directors, volunteers and representatives of City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City 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 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 City in writing within twenty-four (24) hours of any claim or demand against 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. 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 Defense Counsel. 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 period, City shall have the right to retain defense counsel on its own behalf, and Contractor 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 Employee Litigation. 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.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 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.

12.2 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: ***[INSERT LIST OF SUBCONTRACTORS]***. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the Director, prior to the provision of any services by said subcontractor(s). None of the services covered by this Contract shall be subcontracted without the prior written consent of City.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by 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 the Director.

12.4 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 the Director. 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.

12.5 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 VII. 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.

### **XIII. INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and 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 venturers 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 has no authority to bind City.

### **XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM**

14.1 City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367, as amended, also referred to as “SBEDA” or the “SBEDA Program”), which is posted on City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to City. The SBEDA Ordinance Compliance Provisions contained in this Article XIV are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to the SBEDA 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 Contract. Unless defined in a contrary manner herein, terms used in this Article XIV of this Contract 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.

#### **14.2 Definitions.**

- 14.2.1 “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.
- 14.2.2 “Annual Aspirational Goal” - a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City 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 City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by 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 mix and to the 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.
- 14.2.3 “Award” - the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by 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 to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 14.2.4 “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.
- 14.2.5 “Centralized Vendor Registration System (CVR)” - a mandatory electronic system of hardware and software programs by which City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to 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 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.

- 14.2.6 “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 services to a regional Certification agency or other entity. For purposes of Certification, 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 Section III.E.6 of SBEDA.
- 14.2.7 “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.
- 14.2.8 “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.
- 14.2.9 “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.
- 14.2.10 “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 twenty-five percent (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.

- 14.2.11 “Emerging M/WBE”- a certified M/WBE firm whose annual revenues and number of employees are no greater than twenty-five percent (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.
- 14.2.12 “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 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.
- 14.2.13 “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.
- 14.2.14 “Goal Setting Committee (GSC)” - a committee, or series of committees, appointed and chaired by the F 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 City (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.
- 14.2.15 “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: (a) 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 (b) 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.)

14.2.16 "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: (a) it must be owned and Controlled by U.S. citizens; (b) at least thirty-five percent (35%) of its employees must reside in a HUBZone; and (c) 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).

14.2.17 "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 in Section III.E.6 of SBEDA. 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.

14.2.18 "Individual" - an adult person that is of legal majority age.

14.2.19 "Industry Categories" - procurement groupings for City 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."

14.2.20 "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 non-Construction services on behalf of, 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.

14.2.21 “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 City.

14.2.22 “M/WBE Directory” - a listing of M/WBEs that have been certified for participation in City’s M/WBE Program APIs.

14.2.23 “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:

- a. There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- b. 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.

14.2.24 “M/WBE Evaluation Preference” - an API that 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.

- 14.2.25 “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 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).
- 14.2.26 “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:
- a. African-Americans: Persons with origins in any of the black racial groups of Africa.
  - b. Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
  - c. Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
  - d. 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.
- 14.2.27 “Originating Department” - City department or authorized representative of City which issues solicitations or for which a solicitation is issued.
- 14.2.28 “Payment” - dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.
- 14.2.29 “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).
- 14.2.30 “Prime Contractor” - the vendor or contractor to whom a purchase order or contract is issued by City for purposes of providing goods or services for City.
- 14.2.31 “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.

- 14.2.32 “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”).
- 14.2.33 “Relevant Marketplace” - the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 14.2.34 “Respondent” - a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by City.
- 14.2.35 “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.
- 14.2.36 “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.
- 14.2.37 “San Antonio Metropolitan Statistical Area (SAMSA)” - also known as the Relevant Marketplace, the geographic market area from which 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).
- 14.2.38 “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.
- 14.2.39 “SBE Directory” - a listing of small businesses that have been certified for participation in City’s SBE Program APIs.
- 14.2.40 “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 twenty percent (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.

- 14.2.41 "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.
- 14.2.42 "Small Business Office (SBO)" - the office within the Economic Development Department (EDD) of City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- 14.2.43 "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.
- 14.2.44 "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.
- 14.2.45 "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 City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to City's issuance of a notice to proceed.
- 14.2.46 "Suspension" - the temporary stoppage of an SBE or M/WBE firm's beneficial participation in 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 SBEDA, or pursuant to the Penalties and Sanctions set forth in Section III.E.13 of SBEDA.
- 14.2.47 "Subcontractor/Supplier Utilization Plan" - a binding part of this Contract which states Contractor's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this Contract, 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 Contract to be approved by the EDD Director or designee.

14.2.48 “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 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.

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

- 14.3.1 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;
- 14.3.2 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;
- 14.3.3 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 Contract;
- 14.3.4 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, and 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;

- 14.3.5 Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of this Contract, as well as any transfer or change in its ownership or business structure;
- 14.3.6 Contractor shall retain all records of its Subcontractor payments for this Contract for a minimum of four (4) 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 (4) years or as required by state law following the final determination of litigation, whichever is later;
- 14.3.7 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, 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; and
- 14.3.8 Contractor acknowledges that City will not execute this Contract until Contractor has registered and/or maintained active status in 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.

14.4 SBEDA Program Compliance - Affirmative Procurement Initiatives. 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 Contract:

- 14.4.1 SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (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 forty-nine percent (49%) of this Contract's value to a non-SBE firm; and
- 14.4.2 M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 8. (b), 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 forty-nine percent (49%) of this Contract's value to a non-M/WBE firm.

14.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Contract, 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, 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 Contractor retaliate against any person for reporting instances of such discrimination. Contractor 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 City's Relevant Marketplace. Contractor understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in other 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 City pursuant to the solicitation for this Contract is hereby incorporated into the material terms of this Contract. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

14.6 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 (10) 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 City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

14.7 Violations, Sanctions and Penalties.

14.7.1 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 Contract to:

- a. 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;
- b. 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;

- c. 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;
- d. 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
- e. 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.

14.7.2 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:

- a. Suspension of contract;
- b. Withholding of funds;
- c. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
- d. Refusal to accept a response or proposal; and
- e. Disqualification of Contractor or other business firm from eligibility for providing goods or services to City for a period not to exceed two (2) years (upon City Council approval).

14.8 Contractor shall implement the plan (hereafter “SBEDA plan”) submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Contract, thereby meeting the percentages for participation of those groups as submitted in its proposal. Contractor’s SBEDA plan, as submitted with Contractor’s proposal, is attached hereto and incorporated herein by reference as Exhibit B. Contractor shall be in full compliance with this article by meeting the percentages listed in its proposal no later than sixty (60) days from the date of execution of this Contract, and shall remain in compliance throughout the term of this Contract. Contractor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Contract, as may be approved pursuant to this Contract, which will meet the percentages submitted in its proposal.

14.9 Contractor shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE’s. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that Contractor is not in compliance with this Section 14.9, City shall give notice of non-compliance to Contractor. Contractor shall have fifteen (15) days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Contract, for which this Contract may be terminated in accordance with Article VII. Termination.

14.10 In all events, Contractor shall comply with City’s most current SBEDA Program and any amendments or revisions thereto.

**XV. CONFLICT OF INTEREST**

15.1 Contractor acknowledges that it is informed that City's Charter and Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) 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.

15.2 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 City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

**XVI. STATE OF TEXAS CONFLICT OF INTEREST  
QUESTIONNAIRE (FORM CIQ)**

16.1 Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with City, shall file a completed Form CIQ with City Clerk if those persons meet the requirements under §176.066(a) of the statute. By law this questionnaire must be filed with City Clerk not later than the seventh (7<sup>th</sup>) business day after the date the vendor becomes aware of facts that require the statement to be filed.

16.2 If Contractor meets the requirements under §176.066(a) of Local Government Code at any time during the term of this Contract, Contractor shall complete Form CIQ, which may be accessed at [www.ethics.state.tx.us/filinginfo/conflict\\_forms.htm](http://www.ethics.state.tx.us/filinginfo/conflict_forms.htm); and City's Addendum to Form CIQ (Form CIQ-A), which may be downloaded at [www.sanantonio.gov/Ethics/ForCompliance/Vendors-And-Conflict-of-Interest-Reports](http://www.sanantonio.gov/Ethics/ForCompliance/Vendors-And-Conflict-of-Interest-Reports). Contractor shall submit the completed Form CIQ and the Form CIQ-A together, either by mail or hand delivery, to the Office of City Clerk not later than the seventh (7<sup>th</sup>) business day after the date Contractor becomes aware of facts that require the statement to be filed. Contractor shall either mail the forms to Office of City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966, or deliver them by hand to Office of City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205.

**XVII. AMENDMENTS**

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 of the Director, except for amendments that increase the cost of the services provided, which amendments require approval of City Council by passage of an ordinance therefore.

**XVIII. SEVERABILITY**

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 City's Charter, Code, or ordinances, 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 this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XIX. LICENSES AND CERTIFICATIONS**

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

### **XX. COMPLIANCE**

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

### **XXI. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the Director and/or City Council, as described in Article XVII. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

### **XXII. LAW APPLICABLE**

**22.1 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.**

22.2 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.

### **XXIII. LEGAL AUTHORITY**

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he or 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.

### **XXIV. PARTIES BOUND**

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.

XXV. CAPTIONS

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.

XXVI. INCORPORATION OF EXHIBITS

Each of the following Exhibits is an essential part of this Contract, which governs the rights and duties of the Parties: Exhibit A – Price Schedule and Exhibit B –Contractor’s SBEDA Plan.

XXVII. ENTIRE CONTRACT

This Contract, together with its authorizing ordinance and its Exhibits, constitute the final and entire contract between the Parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XVII. Amendments.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO:

CONTRACTOR:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

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

**Attachments:**  
Exhibit A – Price Schedule  
Exhibit B– Contractor’s SBEDA Plan