

AUDIT SERVICES CONTRACT

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 Municipal Corporation acting by and through its City Manager or her designee, pursuant to Ordinance No. 2017-06-15-____ passed and approved on June 15, 2017, and **GRANT THORNTON LLP** an Illinois limited liability partnership, acting by and through its engagement partner, Angela Dunlap (herein referred to as "**CONTRACTOR**").

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the **CITY'S** financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the **CITY** to have its records and accounts audited annually and have an annual financial statement prepared based on the audit; and

WHEREAS, the Single Audit Act Amendments of 1996 and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the **CITY** has gone through an extensive selection process and issued a Request For Proposal ("Request For Proposal") and through such process has chosen **CONTRACTOR** to provide the services described herein for a three year period to include the required audits for the fiscal years ending September 30, 2017, 2018, and 2019, with two (2) one (1) year options to extend the Contract, with City Council approval, for fiscal years 2020 and 2021; 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 **GRANT THORNTON, LLP**,

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, for each fiscal year of this Contract, **CONTRACTOR** will execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CONTRACTOR'S** responsibility for each year's audit, and the total compensation for each year's audit that **CONTRACTOR** will be paid, consistent with the provisions contained in Article VII.
- 2.2 **CITY** and **CONTRACTOR** mutually agree that each annual engagement letter shall become part of this Contract, each time one is executed in accordance with Article VIII and that this Contract and the annual engagement letter for the respective fiscal year shall govern the agreement between the parties for the fiscal year noted in the annual engagement letter. Any conflict between specific provisions of this Contract and similar provisions of the engagement letter, this Contract will prevail as indicated in subsection 8.3.

III. SCOPE OF SERVICES

CONTRACTOR, in accordance with each annual engagement letter, shall provide the following services:

INDEPENDENT AUDIT SERVICES

- 3.1 **CONTRACTOR** is to audit the financial statements of **CITY** during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles as applicable to governmental entities. **CONTRACTOR** is to also perform auditing procedures in accordance with Government Auditing Standards, the Single Audit Act Amendments of 1996 and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, the State of Texas Single Audit Circular and the requirements for the audit of Passenger Facility Charges as required under 14 CFR 158.67 Section (c). It is understood that this audit will be conducted in accordance with Government Auditing Standards and generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary, as determined by **CONTRACTOR**. Accordingly, the audit will not include a detailed audit of transactions to the extent which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. San Antonio Water System, CPS Energy, San Antonio Fire and Police Pension Fund, San Antonio Fire and Police Retiree Health Care Fund, and certain other component units of **CITY** are audited by other auditors or under contracts separate from **CITY**. These component units which currently are, or those which may be included in the future, with the applications of GASB Statement No. 61, *The Financial Reporting Entity: Omnibus – An Amendment of GASB Statements No. 14 and 34*, GASB Statement No. 14, *The Financial Reporting Entity*, and GASB Statement No. 39, *Determining Whether Certain Organizations Are Component Units*, are included

in the scope of work to be performed hereunder but limited only to their respective incorporation into **CITY'S** Comprehensive Annual Financial Report (CAFR).

- 3.2 **CONTRACTOR** agrees to perform the annual audit in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards issued by the Comptroller General of the United States, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, the State of Texas Single Audit Circular and any other authoritative pronouncements which may be deemed applicable. Those standards require that **CONTRACTOR** plan and perform the audit to obtain reasonable assurance about whether the basic financial statements as required and in accordance with GASB Statement No. 34, *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. An audit will further include a review of the system of internal control and tests of transactions to the extent necessary. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the audit opinion will be other than unmodified, the reasons therefore will be fully disclosed. The audit opinion will be signed by **CONTRACTOR** who will assume responsibility for the audit of the financial statements of **CITY**.
- 3.3 **CITY** agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls and the recording of financial transactions, and that the Contract price for the audits by **CONTRACTOR** as quoted in Article VII, is predicated upon this continued conformance with existing and currently known Standards that will impact the City over the course of this Contract. In addition, this Contract is based on the number of major programs to be presented in the Contract periods' Schedules of Federal and State Expenditures (Single Audit Reports) and the number of major funds to be presented in the Contract periods' Comprehensive Annual Financial Reports (CAFR) not substantially changing from a base of eight (8) major programs and twelve (12) major funds [opinion units], respectively, the Passenger Facility Charge Audit, and a Government Financial Assurance Agreed Upon Procedure (AUP) related to Nelson Gardens for the Texas Commission on Environmental Quality (TCEQ). Significant increases or decreases to either the major programs or major funds to be presented in future Single Audit Reports or CAFRs may be negotiated as to cost for additional or reduced audit work and is to be mutually agreed to by **CONTRACTOR** and **CITY** in accordance with Article XIX. **CITY** agrees that a complete set of basic financial statements along with required supplementary information (RSI) will be prepared by its Department of Finance as nearly as practicable in accordance with the form outlined in the then most current version of "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** CAFR not later than March 1st of the year following the fiscal year involved in the audit, or such earlier date established by **CITY** and **CONTRACTOR** in

the Audit Engagement Letter for that year. For good cause, **CITY** and **CONTRACTOR** can extend the date beyond March 1st by so providing in writing that is fully executed and delivered not later than February 15th. City Council approval of any such extension(s) shall not be required. The **CITY** will also provide the **CONTRACTOR** a draft CAFR by February 1st of the year under audit that is complete of any **CITY** adjustments and solely pending inclusion of **CITY'S** Component Units. **CITY** further agrees that a complete Single Audit Report and Schedule of Expenditures of Passenger Facility Charges (PFC Report) will be prepared by its Department of Finance in accordance with Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and other applicable standards and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** Single Audit and PFC Reports simultaneously with the **CITY'S** CAFR. The timing of the completion of **CONTRACTOR'S** auditor reports to be included in the **CITY'S** Single Audit and PFC Reports is dependent on the cooperation received from **CITY** department involved with the programs under audit in clearing audit findings and responding to the audit findings to be included in such reports. **CONTRACTOR** shall promptly notify **CITY** in writing in the event delay is encountered in receiving records and other information from **CITY** departments. If no written notice is received from **CONTRACTOR**, it will be assumed that no delay has been encountered, and no extension beyond March 1st will be available for this reason. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, and schedules of expenditures, management's responses to audit findings which are the representations of management, are with **CITY**.

- 3.4 **CITY** shall have completed and balanced all accounts including a first period general ledger, and have prepared basic financial statements and schedules as required by and in accordance with all applicable GASB Statements to be audited by the **CONTRACTOR** by December 22nd or the year under contract and shall provide **CONTRACTOR** with working space deemed adequate by **CONTRACTOR** for efficient conduct of the audit. **CITY** shall provide **CONTRACTOR** for its use and retention, copies of these financial statements and schedules, and shall provide **CONTRACTOR** with trial balances of the various financial statements as required and in accordance with all applicable GASB Statements in a form reasonably acceptable to **CONTRACTOR**.
- 3.5 The Auditors' Report that will be included in the CAFR will be completed and available for distribution not later than March 1st of the year following the fiscal year involved in the audit, or such earlier date established by **CITY** and **CONTRACTOR** in the Audit Engagement Letter for that year. The Report on Internal Control (Management Letter), Single Audit Reports, PFC Report, and Government Financial Assurance AUP will be completed and available for distribution simultaneously with the **CITY'S** CAFR. For good cause, **CITY** and **CONTRACTOR** can extend the date beyond March 1st by so providing in writing that is fully executed and delivered not later than February 15th. City Council approval of any such extension(s) shall not be required.
- 3.6 **CONTRACTOR** shall at all times be sufficiently staffed with personnel qualified to render all of its services specified in this Contract.
- 3.7 **CONTRACTOR** shall advise **CITY** on pending government accounting issues provided

that no advice shall be required that could impair **CONTRACTOR'S** independence.

- 3.8 **CONTRACTOR** shall conduct the examination with minimal disruption and interference with **CITY's** normal day-to-day operations.
- 3.9 **CONTRACTOR** shall provide normal consultation to **CITY** on various matters related to the audit, governmental accounting standards and the **CITY'S** internal control procedures, at no additional charge during the term of this Contract provided that no consultation shall be required that could impair **CONTRACTOR'S** independence.
- 3.10 **CONTRACTOR** shall make available training on mutually agreed topics to professional accounting and finance staff of **CITY's** Finance Department, Office of the Internal Auditor, and other Departmental personnel equivalent to sixteen (16) continuing professional education (CPE) hours per fiscal year. These services will be considered as part of the fee structure for the independent audit for each fiscal year.
- 3.11 Upon completion of five (5) consecutive annual audits by an engagement partner, **CONTRACTOR** shall replace its existing engagement partner with a new engagement partner who is reasonably acceptable to **CITY**, in order to maintain objectivity and credibility on future audit engagements. If applicable, this requirement shall carry over from a prior **CITY** Audit Services Contract.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below in subsection 4.3 were identified in the Request for Proposal under "Other Services" as those additional services, which the **CITY** may request **CONTRACTOR** to provide. If requested, and **CONTRACTOR** agrees, **CONTRACTOR** shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the Deputy Chief Financial Officer in the forwarded request (subsection 4.2), revisions to terms and conditions mutually agreed to by the parties, and additional terms and conditions as set forth in the applicable Engagement Letter governing the provision of such service(s).
- 4.2 **CITY** will initiate such a request for contingent additional services by forwarding a written request, executed by the Deputy Chief Financial Officer or his designee, to **CONTRACTOR** at its respective address provided herein. Within said request, the Deputy Chief Financial Officer or his designee shall state the scope of services to be provided; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, in accordance with subsection 7.5.
- 4.3 **CONTRACTOR** may agree, subject to its engagement acceptance procedures to provide the following services at the request of the **CITY** in accordance with Section 3.26 of the GAO Amendment No. 3 and any other applicable standards:
 - 4.3.1 Providing advisory services on tax, compliance, or other non-audit consultation

matters.

- 4.3.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.
 - 4.3.3 Advisory services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.
 - 4.3.4 Other services that may be required for a **CITY** bond offering.
 - 4.3.5 Services related to forensic reviews and analyses of **CITY** accounts, records, departments, contracts, or similar matters.
 - 4.3.6 Attestation services to assist in the performing various agreed-upon procedures that would be permissible and not impair the independence of the **CONTRACTOR** to continue to work on this Contract.
- 4.4 In the event the **CITY** requests contingent additional services which, after review by the **CONTRACTOR**, are determined to impair independence or be in conflict with applicable standards, the **CONTRACTOR** is required to notify the Deputy Chief Financial Officer or his designee, in writing, as noted in Article XXII, within ten (10) business days of receipt of said request. This written notice is to include a detailed description of the impairment or conflict.

V. QUALITY CONTROL REVIEWS

- 5.1 Pursuant to Government Auditing Standards, **CONTRACTOR** is required to make certain work papers available to federal regulatory agencies upon request, for their reviews of audit quality and use by their auditors. Access to the requested work papers will be provided to the regulators under supervision of **CONTRACTOR'S** personnel. Unless **CONTRACTOR** is prohibited from doing so by law, **CITY** shall be notified within five (5) working days by **CONTRACTOR** in the event of any such request. **CITY** will not reimburse costs incurred by **CONTRACTOR** related to such review of audit quality. To the extent such work papers are used by the regulators for purposes other than reviews of audit quality and/or to the extent that regulators or grantors request additional procedures beyond the requirements of the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the State of Texas Single Audit Circular, **CONTRACTOR** will notify and discuss such request with **CITY** prior to any costs being incurred by **CONTRACTOR**.
- 5.2 Except with respect to a dispute or litigation between **CONTRACTOR** and the **CITY**, **CONTRACTOR'S** costs and time spent in legal and regulatory matters or proceedings arising from our engagement (except such reviews of audit quality addressed in 5.1 above), such as subpoenas, testimony, or consultation involving private litigation, arbitration, industry or government regulatory inquiries, whether made at the **CITY'S** request or by subpoena, will be billed to the **CITY** separately.

- 5.3 Any such costs agreed to be reimbursed by **CITY** pursuant to subsection 5.1 or subsection 5.2 above will be based on fees negotiated on an individual basis. To the extent funds are appropriated in the then current **CITY** Budget for the payment of such fees, approval and appropriation by **CITY'S** City Council shall not be required.

VI. TERM AND COMMENCEMENT OF WORK

- 6.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the commencement of work through completion of the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2017, 2018, and 2019. In addition, **CITY** shall have the option to renew and extend the Contract for two (2) one (1) year terms, with City Council approval for each renewal and extension, for fiscal years 2020 and 2021. Continuation of this Contract beyond the first year, and each and every year thereafter, is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.
- 6.2 In the event **CITY** requests **CONTRACTOR** to provide any of the contingent additional services set out in Article IV, the commencement and termination dates shall be established in the written request from the Deputy Chief Financial Officer or his designee and as agreed to by the **CONTRACTOR**. The terms and conditions of this Contract shall continue to apply to the provision of such contingent additional services as mutually agreed to by both parties until the completion of such contingent additional services to the satisfaction of the Deputy Chief Financial Officer or his designee.

VII. CONTRACT PRICING AND BILLING

- 7.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the audit services provided for in Article III for fiscal years 2017, 2018 and 2019 shall not exceed the base amount indicated below. If this Contract is renewed and extended for fiscal years 2020 or 2021, the total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the audit services provided for in Article III for those fiscal years shall not exceed the base amounts indicated below. If major programs or major funds are significantly different from the estimate noted in subsection 3.3, incremental costs per major program or fund shall not exceed the amounts presented below for each of the fiscal year indicated. Such fees are predicated on the expectation that the Finance Department of the **CITY** will provide the preparation, reproduction of final copies and filing with required agencies of the annual financial reports and statements, and supporting work papers and schedules at a comparable level with prior years.

Participation of Firms					
<i>Independent Audit Services</i>					
	FY2017	FY2018	FY2019	FY2020	FY2021
Base Fees:					
Prime	\$431,600	\$447,200	\$465,400	\$483,600	\$504,400
Subcontractors	398,400	412,800	429,600	446,400	465,600
Total Base Fees	\$830,000	\$860,000	\$895,000	\$930,000	\$970,000
Sub Base Fees % Total Base Fees	48%	48%	48%	48%	48%
Incremental Fees:					
Opinion Unit	\$10,000	\$10,500	\$11,000	\$11,500	\$12,000
Major Program	\$10,000	\$10,500	\$11,000	\$11,500	\$12,000

- 7.2 **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense, unless the **CITY** requests and approves in writing for **CONTRACTOR** to travel to locations outside of San Antonio, Texas in advance of said trip.
- 7.3 All progress billings for the annual fees established herein will be rendered by the **CONTRACTOR** to the **CITY** in a detailed breakdown of services provided by **CONTRACTOR** and subcontractors to include at a minimum the following information broken out for the CAFR, Single Audit, PFC Reports and Local Government Financial Assurance AUP shall be presented in the following format: Upon receipt of such billing statements, the amount due will be paid by the **CITY** as specified on such statements. However, **CITY** will retain ten percent (10%) of the total annual fee, until the **CITY'S** CAFR, Single Audit Reports, PFC Report, Local Government Financial Assurance AUP and Management Letter have been completed and delivered to **CITY**; provided that the total audit fees for any fiscal year shall be paid in full prior to any services being rendered for the subsequent fiscal year.

<u>Position</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Partner	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Principal	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Manager	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Senior III	\$(Rate)	(Hours)	\$(Hrs. x Rate)
Senior II	\$(Rate)	(Hours)	\$(Hrs. x Rate)

Staff	\$(Rate)	<u>(Hours)</u>	<u>\$(Hrs. x Rate)</u>
Total Labor		Total Hours	\$(Total Labor Amount)
			\$(Total Expenses)
Total Costs			\$(Total Labor & Expenses)
Less: Retainage			<u>\$(10% of Total Amount)</u>
Total Due			\$(Total Amount minus Retainage)

- 7.4 In the event that the **CITY** does not provide assistance as provided for in subsection 7.1, or other similar extenuating circumstances are encountered, as to materially alter the performance and scope of work hereunder, it may be necessary for **CONTRACTOR** to consider the issuance of a settlement statement which details and compares the actual work performed against the original audit plan. However, in no instance will the **CITY** make any payment for the services provided for in Article III in excess of the annual amounts as stated for each fiscal year established in subsection 7.1 without formal written revision of this Contract and related City Council approval.
- 7.5 The services to be provided by **CONTRACTOR** in FY 2017-2018 and FY 2018-2019 are subject to appropriation of funds in **CITY'S** Budget for that Budget Year to pay for those services. If funds are not appropriated in **CITY'S** Budget for that Budget Year, **CITY** shall have the right to terminate this Contract prior to the commencement of that Budget Year by following the provisions of subsection 11.2.3 of this Contract.
- 7.6 Payments for contingent additional services provided in accordance with Article IV, and payments for any costs to be reimbursed by **CITY** in accordance with Article V, will be based on fees negotiated on an individual engagement basis in accordance with the hourly personnel rates agreed to below and any applicable costs as noted in subsection 7.2 associated with the additional services. **CONTRACTOR** shall prepare and submit a billing statement to **CITY** specifying the scope of work performed and amount due. Upon receipt of the billing statement, **CITY** will review and if in compliance with the negotiated fee, shall pay the amount specified due on such statement to the **CONTRACTOR**.

<i>Other Services:</i>					
Position	FY2017 Hourly Rate	FY2018 Hourly Rate	FY2019 Hourly Rate	FY2020 Hourly Rate	FY2021 Hourly Rate
Partner	\$380	\$395	\$410	\$425	\$445
Manager	265	275	285	295	305
Senior	165	170	175	185	195
Staff	135	140	145	150	155

VIII. INCORPORATION BY REFERENCE

- 8.1 The annual engagement letter for fiscal year 2017, executed by **CONTRACTOR**, attached hereto as Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.
- 8.2 The parties hereto acknowledge and agree that prior to the commencement of the fiscal years 2018 and 2019, (and, if applicable through renewal and extension of this Contract, fiscal years 2020 and 2021) audits, herein required, **CITY** and **CONTRACTOR** will execute a new annual engagement letter for each upcoming fiscal year. That annual engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously incorporated annual engagement letter for audit services.
- 8.3 In the event of a conflict or inconsistency between the specific terms of this Contract and the similar provisions of any of the annual engagement letters ultimately incorporated herein as Exhibit A, the terms of this Contract shall govern and prevail.

IX. RECORDS

- 9.1 **CONTRACTOR** shall properly, accurately and completely maintain all time and billing records necessary to support any invoice rendered to the **CITY**, and shall make such materials available to the **CITY** at least once and thereafter as often as the parties may deem necessary during the Contract period, including any extension or renewal hereof, for purposes of inspection and examination by **CITY** and any of its authorized representatives; provided, however, that **CITY** agrees that such representatives (i) shall not be the four largest international public accounting firms and (ii) shall be bound by non-disclosure obligations to protect the confidentiality of the information provided. Notwithstanding the foregoing or anything in this Contract, nothing in this Section or any audit or inspections hereunder, shall violate or cause **CONTRACTOR** to violate any of **CONTRACTOR**'s professional standards, privacy, confidentiality or legal obligations, provided that **CITY** will be provided access to requested information specific and relevant to **CITY** and provided further, that **CONTRACTOR**'s work papers and other proprietary materials are excluded from such audit.
- 9.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder, in accord with all applicable laws, rules, regulations and professional standards, including, but not limited to, Title 22 of the Texas Administrative Code § 501.76 and Statement on Auditing Standards No. 103, *Audit Documentation* (codified as AU Section 339), for a period of five (5) years from the date of completion of each year's audit. If at the end of five (5) years there is pending litigation or other unresolved 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.
- 9.3 **CITY** shall be notified by **CONTRACTOR** not more than three (3) business days after receipt in the event of any requests for information by a third party received by **CONTRACTOR** which pertain to the documentation and records related to the Services

provided hereunder, unless **CONTRACTOR** is prohibited by law from notifying **CITY**. If required to disclose such documentation and records in response to a court order, subpoena, administrative process or request from an accounting oversight body, or as otherwise required under law or regulation, **CONTRACTOR** shall provide **CITY** with sufficient notice to allow it to seek a protective order or other applicable relief from disclosure, unless **CONTRACTOR** is prohibited by law from notifying **CITY**.

X. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY

(SBEDA)

A. Contract Requirements and Commitment

Contractor understands and agrees that the following provisions shall be requirements of this Agreement, and **CONTRACTOR** commits to comply with these requirements.

B. SBEDA Program

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

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative

M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the 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.

Award – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are 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).

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 Contractor's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

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

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

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with

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

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

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

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

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

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

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

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD

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

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

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

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

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

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

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

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

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

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

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

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

M/WBE Evaluation Preference – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best

Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

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

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

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

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

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

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

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

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

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

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

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

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

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSAs), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

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

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

San Antonio Metropolitan Statistical Area (SAMSAs) – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

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

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

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

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

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

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

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

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

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

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

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United

States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

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

E. 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:

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract or self-perform at least **forty percent (40%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). If the Prime CONTRACTOR is a certified M/WBE firm, then the CONTRACTOR is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime CONTRACTOR does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

The Subcontractor/Supplier Utilization Plan which CONTRACTOR submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached as Exhibit ___ and incorporated by reference into the material terms of this Contract.

In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain this M/WBE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain a subcontracting goal for M/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 40% that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio architecture and engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of October 2016, African-American owned firms represent approximately 2.24% of available subcontractors, Hispanic-American firms represent approximately 7.33%, Asian-American firms represent approximately 0.71%, Native American firms represent approximately 0.12%, and Women-owned firms represent approximately 3.98% of available professional services subcontractors.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

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

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

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

XI. TERMINATION

- 11.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provision of services required herein or earlier termination pursuant to any of the provisions hereof.
- 11.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following:
 - 11.2.1 Neglect or failure by **CONTRACTOR** to perform or observe any of the terms, conditions, covenants or guarantees of this Contract or of any amendment between **CITY** and **CONTRACTOR**;

- 11.2.2 Failure by **CONTRACTOR** to comply with Article X. above and required throughout the entire term of this Contract, and/or to correct any deficiency therein within the time allotted, as specified in a written notice from **CITY** to **CONTRACTOR** SENT PURSUANT TO Section 10.4 above;
- 11.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days written notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
- 11.2.4 It is possible that because of unexpected circumstances, **CONTRACTOR** may determine that it is unable to form an opinion or complete the engagement. Accordingly, **CONTRACTOR** may decline to express an opinion or issue reports. Further, if in its professional judgment the circumstances necessitate, **CONTRACTOR** may resign from the engagement prior to completion. In the event of such resignation, **CONTRACTOR** shall give **CITY** thirty (30) days prior written notice.
- 11.3 Subsection 11.2.1 notwithstanding, in the event that any such neglect or failure to perform or observe terms, conditions, covenants, or guarantees occurs, **CITY** shall give written notice to **CONTRACTOR** and allow **CONTRACTOR** ten (10) days from the date of such receipt of notice to cure the neglect or failure. If the noted deficiencies are not remedied within the allotted time and to the satisfaction of the **CITY**, the **CITY** may proceed with the termination of this Contract. This Section 11.3 **shall not apply** to termination of this Contract pursuant to Article X. Section 10.4 and Article XI. Section 11.2.2 of this Contract, **or** to termination of this Contract pursuant to Section 11.2.4 above.
- 11.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated.
- 11.4.1 Upon receipt by either party of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall be provided to the **CITY**, provided that **CONTRACTOR** determines in its sole discretion it is able to provide such reports under applicable professional standards.
- 11.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice to terminate and for any necessary and proper work performed in the ensuing thirty (30) day period, to be determined after discussion with **CITY**, provided however, that such payment shall not exceed the maximum amount set out in subsection 7.1

XII. SUBCONTRACTING

12.1 **CONTRACTOR** in its Proposal to **CITY** has identified the following parties as subcontractors it will utilize in its performance and delivery of services under this Contract: **1) BRITT'S & ASSOCIATES, LLP** (MBE-WBE-AABE-ESBE – 15% Good Faith Effort Level of SBEDA participation); **2) ARMSTRONG, VAUGHAN & ASSOCIATES, P.C.** (WBE-ESBE – 8% Good Faith Effort Level of SBEDA Participation); **3) ROBERT J. WILLIAMS, CPA** (MBE-AABE – 10% Good Faith Effort Level of SBEDA Participation); and **4) SCHRIVER, CARMONA & CARRERA, PLLC** (MBE-HABE-ESBE – 15% Good Faith Effort Level of SBEDA Participation). Each of said parties is hereby approved by **CITY** as a subcontractor under this Contract.

12.2 Due to the professional experience required to perform the **CONTRACTOR** services specified in this Contract, **CONTRACTOR** must obtain prior written approval from **CITY's** Deputy Chief Financial Officer and **CITY's** Director of Economic Development before engaging and utilizing the services of any subcontractor other than the four subcontractors approved in subsection 12.1 above. **CONTRACTOR** acknowledges and agrees that they have met, and exceeded, the mandatory 40% Level of SBEDA Participation required per subsection 10.3 by subcontracting out 48% of the Contract throughout the entire term of this Contract. **CONTRACTOR** shall apply for the **CITY'S** approval of the engagement and utilization of any subcontractor other than the four subcontractors approved in subsection 12.1 above; i.e., the engagement and utilization of any subcontractor other than (or in addition to) the four subcontractors approved in subsection 12.1 above must result in at least a 48% Level of SBEDA Participation for all then current subcontractors under this Contract.

12.3 The work and services to be assigned to and performed by each subcontractor under this Contract shall be determined by **CONTRACTOR**, and shall be subject to all provisions of this Contract, including specifically the % Level of SBEDA Participation provisions set forth above. Compliance by each subcontractor with all of the terms and conditions of this Contract shall be the sole responsibility of **CONTRACTOR**. **CONTRACTOR** shall be solely responsible for payment of fees to each subcontractor for work and services performed by such subcontractor under this Contract.

XIII. ASSIGNABILITY

13.1 Neither party shall assign any interest in this Contract to any other party without the prior written consent of the other party.

XIV. CONFLICT OF INTEREST

14.1 **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.

14.2 **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.

- 14.3 **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.

- 14.4 **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 XXIII. Below.
- 14.5 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.
- 14.6 **CONTRACTOR** warrants and certifies and this contract is made in reliance thereon that it has tendered to **CITY** an accurate Litigation Disclosure Statement.

XV. COMPLIANCE

15.1 **CONTRACTOR** shall comply with the applicable independence standards promulgated by the General Accounting Office (GAO), the American Institute of Certified Public Accountants and any other standard related to independence promulgated by any other relevant authoritative body, as applicable to the services provided hereunder.

15.2 **CONTRACTOR** shall comply with all federal, state and local laws, rules and regulations applicable to the services provided hereunder, including but not limited to the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, the State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XVI. INSURANCE

16.1 Prior to the commencement of any work under this Contract, Respondent shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "Independent 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 or CONTRACTOR's broker. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to 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.

16.2 **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 whereby **CITY** may incur increased risk. Notwithstanding the foregoing, any modifications that negatively impact **CONTRACTOR'S** obligations under the Contract must be agreed to by **CONTRACTOR**.

16.3 **CONTRACTOR'S** financial integrity is of interest to the **CITY**; therefore, **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, except for professional liability which is on a claims made basis, by companies authorized to provide coverage 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	For <u>Bodily Injury</u> and <u>Property Damage</u> of

to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	\$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Non-owned vehicles b. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, \$1,000,000 aggregate.

16.4 **CONTRACTOR** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage types required of **CONTRACTOR** herein, and provide a certificate of insurance and, except for Professional Liability policy, endorsement that names the **CONTRACTOR** and the **CITY** as additional insureds. **CONTRACTOR** shall provide the **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. Unless the modification negatively impacts **CONTRACTOR'S** obligations under the 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. Any modification that negatively impacts **CONTRACTOR** must be agreed to in advance in writing by **CONTRACTOR** prior to such modification taking effect.

16.5 As they apply to the limits required by the **CITY**, **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and endorsements thereto to the extent that such copies provide reasonable evidence of the insurance coverage required by this Contract and may require that **CONTRACTOR** use commercially reasonable efforts to request to its insurance brokers to delete, revise or modify 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) to ensure that the contractually agreed to insurance coverage will not be negated. **CONTRACTOR** may redact confidential business information, so long as (a) the confidential business information redacted does not include provisions that would negate or modify the insurance coverage required by this Contract, and (b) the unredacted information provides reasonable evidence of the insurance coverage required by this Contract.

16.6 **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 insureds by endorsement or blanket additional insured

coverage, 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 advance written notice directly to **CITY** of any cancellation, in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium of Commercial General Liability coverage. Notice of cancellation of Professional Liability policy shall be delivered in accordance with policy provisions.

16.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **CITY** 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.

16.8 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.

16.9 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.

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

16.11 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.

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

XVII. INDEMNIFICATION

17.1 **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 for 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 such instances where such negligence causes personal injury, death or tangible 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.

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.

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. Such selection or approval shall not be unreasonably made or withheld. **CONTRACTOR** shall retain **CITY** approved defense counsel within a reasonable time period 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 reasonable 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.

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.

- 17.2 **CITY** will pay to **CONTRACTOR** all costs and all other sums or expenses of any nature or type whatsoever that are imposed upon or sought from **CONTRACTOR** that arise from and are directly related to **CITY'S** knowing misrepresentations, willful misconduct, or fraudulent behavior in connection with its activities under this Contract. **CONTRACTOR** shall advise **CITY** in writing within five (5) business days of any demand, claim or proceeding to which **CONTRACTOR** believes this Section is applicable. **CITY** shall have the right, at its option and at its own expense, to defend any such demand, claim, or

proceeding, or to participate in such defense. **CITY** and **CONTRACTOR** agree that this Section 17.2 does not constitute the main or essential purpose of this Contract, and should this provision be deemed not permitted by law, it is the desire and intention of both **CITY** and **CONTRACTOR** that this Contract not be declared void, but that rather, the Contract be construed in accordance with Article XXII below.

- 17.3 **CONTRACTOR's** liability under the terms of this Contract **WILL NOT INCLUDE** responsibility for any claimed exemplary or punitive damages even if Contractor was advised in advance of such potential damages. This provision **SHALL NOT APPLY** in the event of **CONTRACTOR's** gross negligence or willful misconduct.

XVIII. INDEPENDENT CONTRACTOR

- 18.1 It is expressly understood and agreed that the **CONTRACTOR** provides services as an independent **CONTRACTOR** responsible for its own acts or omissions and that **CITY** shall in no way be responsible therefor. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XIX. CHANGES AND AMENDMENTS

- 19.1 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.
- 19.2 The parties hereto understand and agree that any request(s) by the **CITY** to provide contingent additional services pursuant to Article IV shall not constitute an amendment to the provisions of this Contract.
- 19.3 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.

XX. LICENSES/CERTIFICATIONS

- 20.1 **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.

XXI. OTHER AGREEMENTS

- 21.1 It is acknowledged and understood by the parties hereto that this Contract, including the respective Annual Engagement Letter for each fiscal year executed pursuant to it, 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, the Annual Engagement Letters 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. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR** and that engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services. In the event of a conflict or inconsistency between specific terms of this Contract and the similar provisions of any of the engagement letters, ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

XXII. SEVERABILITY

- 22.1 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.

XXIII. NOTICES

- 23.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, certified mail, postage prepaid, to the addresses set forth below, with the exceptions as stated in Section 10.4 and 10.5.

City of San Antonio
Attn: Troy Elliott, Deputy Chief Financial Officer
P. O. Box 839966
San Antonio, Texas 78283-3966

With Copy To: City of San Antonio
Attn.: Melanie Seale, Assistant Finance Director

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

Grant Thornton LLP
Attn.: Angela Dunlap, Partner
112 East Pecan Street
Suite 2800
San Antonio, Texas 78205

With Copy to: Grant Thornton LLP
Dept of Risk, Regulatory and Legal Affairs
171 N. Clark Street, Suite 200
Chicago, IL 60601

XXIV. LAW APPLICABLE

- 24.1 This Contract shall be construed under and in accordance with the laws of the State of Texas without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.
- 24.2 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, County of Bexar, Texas.

XXV. LEGAL AUTHORITY

- 25.1 The signer of this Contract on behalf of **CONTRACTOR** represents, and warrants, that he has full legal authority to execute this Contract on behalf of **CONTRACTOR** and to bind **CONTRACTOR** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. PARTIES BOUND

- 26.1 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, except as otherwise expressly provided for herein.

XXVII. GENDER

- 27.1 Words of any gender used in this Contract shall be held and construed to include any other gender.

XXVIII. CAPTIONS

28.1 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.

XXIX. THIRD PARTY SERVICE PROVIDERS

29.1 **CONTRACTOR** may use third-parties to provide administrative and operational support to **CONTRACTOR**'s business operations. All of these third party service providers are subject to confidentiality obligations to protect the confidentiality of client data. Such entities may be located within or outside the United States.

XXX. CORPORATE CARD

30.1 From time to time, **CONTRACTOR** may receive certain incentives in the form of bonuses and rewards from its corporate card and other vendors. Such incentives to the extent received will be retained by **CONTRACTOR** to cover firm expenses.

XXXI. ELECTRONIC COMMUNICATIONS

31.1 **CITY** and **CONTRACTOR** agree to the use of electronic methods to transmit and receive information, including confidential information.

EXECUTED and AGREED to this the _____ day of June, 2017

CITY:
CITY OF SAN ANTONIO

CONTRACTOR
GRANT THORNTON, LLP

Troy Elliott, CPA
Deputy Chief Financial Officer

Angela Dunlap
Engagement Partner

Approved as to form:

Robert K. Nordhaus
Assistant City Attorney