

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**CITY OF SAN ANTONIO
PROFESSIONAL HEALTH CARE
SERVICES AGREEMENT**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as City), and Angel Staffing, Inc. (hereinafter referred to as "Contractor" herein), both of which may be referred to herein collectively as the "Parties."

WITNESSETH

WHEREAS, the City of San Antonio Metropolitan Health District (Metro Health) issued a request for proposals (RFP) for temporary employment agencies to provide medical staff in the event of a public health emergency. An "Emergency" means an event or series of events that require Metro Health's response to a public health need including evacuation, sheltering, or public health emergency; and

WHEREAS, Contractor submitted a response to said RFP and is willing to provide the services described herein, with the understanding that this will not be an exclusive contract; and

WHEREAS, Contractor shall support an effective health and medical response to an emergency, disaster, or public health event for the City of San Antonio and/or Bexar County; and

WHEREAS, Contractor shall provide trained and professional personnel to be deployed to provide professional services during a disaster, emergency or public health event; for medical special needs shelter support during a disaster or emergency; and/or for medical and health care at other locations, such as evacuation comfort stations, fuel stations, or on evacuation buses or medical transport, during a disaster or emergency; and

NOW THEREFORE, in consideration of the mutual covenants and agreements stated herein, the Parties agree as follows:

I. DEFINITIONS

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

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's San Antonio Metropolitan Health District.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 1, 2018 and terminate on August 31, 2020, or until such time as funding for the agreement has been expended, whichever is later. Upon agreement of the parties, this Agreement may be renewed for two one year terms on the same terms and conditions. Renewals shall be in writing and signed by the Director of Metro Health without further action by the San Antonio City Council.

2.2 Contractor agrees and understands that City has projected costs for this Agreement and that City expects to pay all obligations of this Agreement from projected revenue sources, which may include grant funds, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2018. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Agreement, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations the City may terminate this Agreement after providing Contractor thirty (30) days written notice that City is terminating on such grounds of budget underfunding and such termination shall be effective no sooner than thirty (30) days after Contractor's receipt of such written notice. City's termination on such grounds shall terminate this Agreement after such notice and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Agreement as to any services performed by Contractor subsequent to 60 days after being provided notice of termination based on underfunding. Payment for services performed by Contractor through the effective date of termination shall be made pursuant to Article 7.6 herein.

2.3 It is expressly understood and agreed by the City and Contractor that if City does not receive adequate funds to meet the City's liability under this Agreement, City may terminate this Agreement per Paragraph 7.2 (without cause) and City's obligations under this Agreement are limited to the services provided through the date of termination. Lack of funding is not and shall not be considered a breach of this Agreement by the City.

III. SCOPE OF SERVICES

3.1 Contractor shall provide trained and professional personnel for medical staffing services in accordance with the specifications listed herein. The Contractor will be primarily responsible for assisting in providing medical and public health services personnel that will be deployed at various sites identified by Metro Health.

3.2 Contractor shall support an effective health and medical response to an emergency, disaster, or public health event for the City of San Antonio and/or Bexar County. In cooperation with, and at the direction of Metro Health, the Contractor shall provide trained medical and professional personnel, deployed at sites identified by Metro Health, for the purposes of assisting in providing medical and public health services. These services may include, but are not limited to, triage and medical screening, vaccination, dispensation of medications or medical supplies and provision of first aid.

3.3 Contractor shall be part of the Medical Volunteer Coordinating Committee (MVCC), which entails support of MVCC's mission to coordinate medical volunteers from within the Contractor's agency as well as to assist in the coordination of spontaneous volunteers outside

Contractor's agency.

3.4 Medical Professionals provided by the Contractor shall be licensed by the State of Texas in the appropriate professional field. Professionals who are not licensed in Texas but hold a license in the appropriate field from another state may be provided to Metro Health under the following circumstances:

- a) All provisions of this contract relating to Professionals must be met, other than the requirement for the individual to hold a Texas license unless provision c) of this paragraph applies;
- b) The Contractor must inform each Professional that is deployed that the individual is not being deployed pursuant to the Emergency Management Assistance Compact, Health and Safety Code, Chapter 778 (EMAC) and therefore is not deemed to be licensed in the State of Texas under EMAC or subject to the limitations on liability in EMAC, and
- c) If an executive order or proclamation from the Governor declaring a state of disaster is not in effect, each Professional must be licensed in Texas if licensure is required by Texas law or the Professional must work under the delegated authority of a physician licensed in the State of Texas.

3.5 The Contractor shall be responsible for providing a physician licensed in the State of Texas to provide the delegated authority. If the Contractor is a nonprofit professional association composed primarily of members of a specific profession who are not physicians, the requirement for the Contractor to provide a physician for delegated authority shall not apply.

3.6 The Contractor's specific duties and responsibilities under the contract shall include:

- a) Using good faith efforts to provide volunteers and exhaust medical and non-medical staff resources during the onset of a disaster event complemented by the size and scope of the event.
- b) Providing medical staff in the event of a public health emergency. Medical staff will include Licensed Physicians, Licensed Physician Assistants, Registered Nurses, Licensed Vocational Nurses, Advanced Practice Nurses, Certified Nurse Aides, Certified Respiratory Care Practitioners, Licensed Paramedics, Licensed Pharmacists, Registered Pharmacy Technicians, Licensed Social Workers, Licensed Professional Counselors, Licensed Psychologists, Emergency Medical Technicians, Epidemiologists, Staffing Specialist Coordinators, On-Site Staffing Consultants, Administrative Staff (e.g., medical records clerk).
- c) Providing a specialized team of professionals under this contract that could be deployed for a specific purpose as a team rather than as individuals. For example, Metro Health may request a physician, nurses, and paramedics to serve as a medical strike team to support a shelter medical clinic. There will be no deployments of personnel outside Bexar County.

- d) Establishing and implementing policies and procedures to provide for credentialing of its Professionals who may be deployed to provide services under this Contract. The policies and procedures shall include verification of licensure, licensure status (e.g., license is in good standing), specialties, and privileges at hospitals or other health care facilities at the time a Professional signs up with the Contractor but no later than the time of deployment. The policies and procedures shall include periodic re-verification of these matters. The Contractor shall keep written records on each Professional that may be deployed under this Contract. The Contractor shall obtain all of this information at a time that will not cause delay in responding to a deployment notification.
- e) Obtaining a criminal background check on each Contractor Staff that may be deployed under this Contract. A national background check shall be obtained. Any individual with a felony conviction shall not be utilized under this Contract. The Contractor shall obtain the criminal background check at the time the individual signs up with the Contractor but no later than the time of deployment. The Contractor shall obtain each check at a time that will not cause delay in responding to a deployment notification. If necessary, Metro Health reserves the right to waive this requirement and will notify the Contractor in writing or via email, of this change.
- f) Obtaining and maintaining professional liability insurance to cover each Professional providing service to Metro Health during a disaster or emergency at any location within the State of Texas, or shall require the Professionals to maintain and provide proof of professional liability insurance that will cover the Professional at any location in the State of Texas to which the Professional may be deployed by Metro Health in a disaster or emergency. The Contractor shall use its best efforts to maintain copies of each insurance policy in its records.
- g) Using its best efforts to ensure that each Professional has current Red Cross certification cardiopulmonary resuscitation training prior to the Professional's deployment.
- h) Making all travel arrangements for Contractor Staff deployment, including transportation to the response location and lodging near the response location. Metro Health shall have no responsibility to make such arrangements: There will be no deployments of personnel outside Bexar County. The Contractor agrees that Metro Health will be provided with notice two (2) business days prior to assigning personnel that will be required to travel more than 50 miles a day. Upon receiving such notice, Metro Health may choose to reject the use of personnel that will require travel reimbursement prior to their deployment. If Contractor Staff exceeds 50 miles of travel a day in connection with a deployment under this Agreement, the Contractor shall also be reimbursed for reasonable mileage to reimburse its Contractor Staff, which rates shall not exceed any mileage rate for City employees. The Contractor agrees that in deploying personnel that will require travel reimbursement, it will utilize and deploy personnel that are closest to the deployment site to minimize travel costs.
- i) Providing reports to Metro Health on potential Contractor Staff before deployment or on Contractor Staff activities during deployment as reasonably requested by Metro Health. The health and medical records created by Contractor Staff under this Contract shall remain in the care, custody and control of Metro Health. The Contractor and its

Contractor Staff shall not remove or copy any of these records unless authorized by Metro Health.

- j) Providing Metro Health a secondary point of contact. A point of contact shall be available 24-hours/seven (7) days a week during the term of this Contract. Metro Health will assign a primary and secondary point of contact. Either Party may change its' point of contact(s) with written notice to the other Party at least five (5) days before the change is effective. The five day requirement does not apply during deployment.
- k) Using reasonable efforts to ensure that the Contractor Staff has received the following minimum vaccines: Tdap (Pertussis), Varicella (Chickenpox vaccine or had Chickenpox), and MMR. (Measles, mumps, rubella; or born before 1951) prior to deployment. A flu vaccine is recommended but not required. Contractor shall reasonably document in its records that it has verified that each Contractor Staff has met these minimum vaccine requirements prior to deployment. Metro Health will provide any additional vaccines or prophylaxis needed for a particular disaster or emergency at its expense.
- l) Using reasonable efforts to verify that each Contractor Staff is immuno-competent at the time of the individual's deployment, including that the individual is physically able to provide services in a high stress, austere, and extraordinary situation.
- m) Not billing third parties, clients, patients or other persons for the services provided under this Scope of Work unless authorized by Metro Health in writing.

3.7 The professional services to be provided by the professional personnel provided by the Contractor may also include, but not be limited to the following:

- a) Providing immunizations during full-scale exercises and disaster events such as floods, hurricanes, flu outbreaks, etc. Examples include Tetanus, Hepatitis A, and Influenza.
- b) Dispensing medications at Point of Dispensing (POD) sites for mass prophylaxis events such as flu outbreaks and bioterrorist events. Examples include Doxycycline, Cipro, and antivirals.
- c) Providing medical care and functional needs assistance in response to a mass care event or evacuation to general population or medical shelter(s).
- d) Providing medical staff, infection control, and/or epidemiologists to assist Public Health Emergency Preparedness Staff in an emerging infectious disease outbreak to provide medical treatment/prophylaxis, investigation and surveillance and implement control measures per the Director of Metro Health and/or the regional Health Authority.
- e) Upon the request of Metro Health, the Contractor shall make a reasonable effort to provide one or more staffing specialists/liaisons/coordinators (Liaison) who shall be considered to be part of "Other Staff". Each Liaison shall assist Metro Health to assess and make recommendations on staffing. Each Liaison shall be an individual with appropriate knowledge of professional licensure, credentials, and experience to

meet possible needs during a disaster or emergency. During a disaster or emergency each Liaison shall be available twenty-four hours/seven (7) days a week by telephone or on-site at a response location at the request of Metro Health. Time at the response location will not exceed a sixteen (16) hour shift for seven (7) consecutive days. Each Liaison also shall participate in planning meetings, conference calls, training, and exercises prior to deployment to the extent that Metro Health provides at least three (3) business day's written notice to the Contractor of the meeting, call, training, or exercise. The following are examples of the type of Liaison that may be requested: (A) Staffing Specialist Coordinator: A person with the capability to perform high level work and remain the overall responsible person for the Contractor's response to work with Metro Health to provide consultative services for requests generated, needs assessments and high level management of the Contractor and Metro Health interaction during planning of a response, real time response and after-action process. Person shall be expected to be available within 2 hours of activation via conference call and within 8 hours on site if requested. (B) On-Site Staffing Consultant: A person who will remain on-site at major medical response site where Contractor has deployed Professionals. He or she shall be skilled at real-time assessments of medical staffing needs, have the ability to anticipate needs based on event, be able to troubleshoot issues with deployed staff, and have quick contact to Metro Health to manage rapidly changing needs to best serve the Metro Health response during an event. The person will act as on-site point of contact for Metro Health command and control structure for medical staffing needs; will assure deployed staff needs are fully addressed, including scheduling of shifts; will be the point of contact for any spontaneous medical volunteers who appear at the response site to engage them in appropriate process; and, will remain on site and on call at night until services are no longer requested by Metro Health as determined by on-site Metro Health command staff or its designee.

- f) The Contractor and professional staff provided by Contractor shall comply with written policies and procedures provided to the Contractor prior to deployment to a disaster or emergency. The Contractor shall use its best efforts to provide these written policies and procedures to its professional staff prior to deployment to a disaster or emergency. The Contractor shall document the date policy (ies) and procedure(s) were issued to each professional staff member.
- g) Additional policies and procedures may be established by Metro Health during a disaster or emergency including after deployment of professional staff provided by Contractor. The Contractor shall adhere to any additional policies and procedures communicated, verbally or in writing, by Metro Health with the Contractor.

3.8 Additional Requirements:

- a) Each physician from Contractor's professional staff shall understand broad primary care and triage principals and have confidence in clinical acumen in assessing persons of all ages in an acute, fast paced setting. He or she must understand and be able to practice medicine with limited on-site support systems for best effort of evaluation, diagnosis, treatment and stabilization of common ailments, conditions, and diseases in an effort to assure the health and well-being with limited morbidity and mortality of the population being served. He or she shall be ready to accept the

role of team leader of a multi- disciplinary medical team and be able to provide clear, concise, guidance to all members of the medical team within the scope of practice established by the Medical Director of the response effort.

- b) Physicians who are board certified or board eligible in the following American Board of Medical Specialties are preferred Professionals:

- 1) American Board of Family Medicine
- 2) American Board of Preventive Medicine
- 3) American Board of Emergency Medicine
- 4) American Board of Internal Medicine
- 5) American Board of Pediatrics

- c) All Professionals must be skilled at working in an acute, ambulatory setting, without the expectation of a regular physical work environment or close direct supervision. Each one shall have the ability to use professional experience to determine best care practices in their field with limited standing delegation orders, verbal orders, or written policies but able to ensure the best effort to limit morbidity or mortality of persons served. Each one must be able to function within a multidisciplinary medical team, remain flexible to a fast paced, changing environment with limited stability of daily operations. Each one must be willing to take medical orders from the designated team leader on site at the time of the response. Each one must be willing to serve in various subordinate roles but not to exceed their level of formal training. Each one must be able to serve all ages with a vast array of medical conditions, populations special needs.

- d) The Contractor shall comply with all applicable regulations, standards and guidelines in effect on the commencement date of this contract

- e) The Contractor shall comply with all applicable federal and state laws, rules, and regulations in effect on the commencement date of this contract, including but not limited to, the following:

1. Public Law 107-188, Public Health Security and Bioterrorism Preparedness and Response Act of 2002;
2. Public Law 109-417, The Pandemic and All-Hazards Preparedness Act of 2006;
3. Chapter 81, Texas Health and Safety to include compliance with Chapter 181, Texas Medical Records Privacy Act; and
4. 45 CFR Part 160 – 164, Health Insurance Portability and Accountability Act.

- 3.9 Metro Health's specific duties and responsibilities under the contract shall include:

- a) Metro Health shall provide a daily verbal or written report to the Contractor on situational awareness during a disaster or emergency.

- b) On-site management of professional personnel provided by Contractor at each response location shall be provided by Metro Health, a designee of Metro Health, or by federal, state, or local government employees or officials.
- c) Metro Health shall provide a deployment notification to the Contractor.
- d) Equipment and supplies shall be provided by Metro Health; state, local or federal government; or other sources.
- e) Metro Health may give the Contractor a verbal or written alert of a possible deployment request but the timeframes in the preceding paragraph shall not start to run from that alert.
- f) Metro Health may make multiple requests to the Contractor during a single disaster or emergency. A subsequent request will not change the timeframes for an earlier request as set forth in the preceding paragraph unless Metro Health expressly states in the subsequent request that the earlier timeframes are increased.
- g) Each professional personnel provided by Contractor shall serve no more than a sixteen hour shift on each of the days of actual service at the discretion of Metro Health. In addition each Contractor Staff shall report thirty (30) minutes prior to the start of each of the individual's shifts and remain for up to thirty (30) minutes after the end of each of the individual's shifts in order to provide for transitioning between shifts. Each Contractor Staff shall receive orientation from Metro Health or its designee prior to the individual's first shift. Each Contractor Staff shall remain after the individual's last shift for up to two (2) hours of demobilization activities unless waived by Metro Health. The 30 minutes transition, orientation, and demobilization times are paid time.
- i. At the discretion of Metro Health, a Professional or Other Staff may be deemed to be unacceptable to Metro Health for any reason and Metro Health shall be authorized immediately to release that individual and end the individual's deployment. Metro Health shall notify the Contractor as soon as possible before or after release. The Contractor will use reasonable efforts to replace the released Professional or release other Staff within twenty-four (24) hours of the notification from Metro Health if requested by Metro Health.

3.10 City shall have the right to terminate this Agreement, in accordance with Article VII should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate.

3.11 City may contract with more than one entity to provide similar services and may assign priority to one or more of the contracts at its discretion. Contractor understands and agrees that nothing in this Agreement shall limit this ability.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of City's promise to pay and perform as set forth herein, and in consideration of Contractor's promises to perform under this Agreement herein, the parties have agreed to the terms herein. Specifically, City agrees to pay Contractor an amount not to exceed THREE HUNDRED AND SEVENTY FIVE THOUSAND AND NO/100THS DOLLARS (\$375,000.00) consistent with the hourly rates per title as set out in the following table:

Compensation Schedule

Position	Hourly Rate
Licensed Physicians	\$200.00
Licensed Physician Assistants	\$95.00
Registered Nurses	\$65.00
Licensed Vocational Nurses	\$51.00
Advanced Practice Nurses	\$95.00
Certified Nurse Aides	\$35.00
Certified Respiratory Care Practitioners	\$60.00
Licensed Paramedics	\$60.00
Licensed Pharmacists	\$80.00
Registered Pharmacy Technicians	\$40.00
Licensed Social Workers	\$75.00
Licensed Professional Counselors	\$80.00
Licensed Psychologists	\$95.00
Emergency Medical Technicians	\$40.00
Epidemiologists	\$80.00
Staffing Specialist Coordinators	\$75.00
On-Site Staffing Consultants	\$75.00
Administrative Staff	\$40.00
Medical Records Clerk	\$40.00

Staffing Specialist Coordinator	\$75.00
On-Site Staffing Consultant	\$75.00
Average Hourly Rate	\$72.90

4.2 Contractor may direct its periodic billing to:

San Antonio Metropolitan Health District
Department Fiscal Administrator
111 Soledad, Suite 1000
San Antonio, Texas 78205

or at another location and to any billing contact as the City may hereafter direct in writing to Contractor.

4.3 Contractor shall keep reasonably detailed time logs or timesheets to support such billings, documentation shall be made available to the City upon reasonable request from the City.

4.4 City shall pay Contractor within 30 days from the submission of Contractor's invoices for the supply nursing or other professional medical services. Any arrearages (unpaid invoices after 30 days) shall accrue interest at the annual rate approved for late payments by the State in effect at the time of the arrearage, but in no event to be more than an annual rate of 8%, until paid in full to Contractor. The parties agree that Contractor will not be billed or assessed fees or backcharges or offsets with any claims of damages or alleged breach of this Agreement. Any such claims by Metro Health shall be independently asserted and not used to hold up or offset billings.

4.5 Contractor will be paid an hourly rate for each deployed Contractor Staff at the rate specified for the particular Contractor Staff title listed above.

4.6 The hourly rates include all expenses associated with the Contractor's or Contractor's Staff compliance with this contract, including professional liability insurance, unless stated otherwise in this Contract. The hourly rate will be based on the work time of each Contractor Staff.

4.7 City and Contractor agree that reimbursement for eligible services shall be made within thirty (30) days after the date on which City receives an invoice, with appropriate documentation as reasonably required by City, from Contractor for said services.

4.8 City and Contractor agree that the City will provide the clinical staff support and supplies necessary for Contractor to manage patient care.

4.9 City and Contractor understand and agree that all Medicaid and third party insurances will be billed by the Metro Health for clinical services at Metro Health facilities and that all revenues received by the Metro Health for said billing shall be the property of City.

4.10 City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

4.11 The Contractor further agrees to accept reimbursement from the City as set forth in Article 4.1 above as payment in full for the services provided and shall seek no additional reimbursement for the services from the patient.

4.12 City agrees to pay Contractor for hours that a medical professional is scheduled to work if said scheduled hours are cancelled by City with less than twelve (12) hours notice.

4.13 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City other than as specified or authorized in above.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents, or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement shall be the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents, and information, City has the right to use all such writings, documents, and information as City desires. Contractor agrees to comply with the Health Insurance Portability and Accountability Act (HIPAA). Contractor has entered into a Business Associate Agreement with the City that is attached hereto as **Attachment A** and incorporated herein as a part of this Agreement for all purposes.

VI. RECORD REQUESTS

6.1 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced in Article V herein. Contractor understands and agrees that City will process and handle all such requests, regarding records that are owned or possessed by the City.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Contract term as stated in Article II, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City or by Contractor upon thirty (30) calendar day's written notice to the other party, which notice shall be provided in accordance with Article VIII.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XI.

7.4 Defaults With Opportunity for Cure. Should Contractor materially default in the performance of this Agreement in a manner stated in sections 7.4.1 through 7.4.3 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have ten (10) calendar days after receipt of the written notice, in accordance with Article VIII, to cure such default. If Contractor fails to cure the default within such ten (10) day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement.

- 7.4.1 Failing to perform or failing to comply with any covenant herein required
- 7.4.2 Failure to comply with the terms and conditions stated in Attachment B-Small Business Economic Development Advocacy Program Requirements
- 7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Contractor must submit any claims for monies owed by City for services performed under this Agreement through the effective date of termination within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement. Prior to termination, billing to the City by Contractor shall be periodically during deployment. Payment of such bills by the City is due within 30 days.

7.7 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek actual damages from or otherwise pursue Contractor for any default hereunder or other action. No punitive damages will be sought by any party against the other.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper

postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

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

AND City of San Antonio
San Antonio Metropolitan Health District, Director
111 Soledad, Suite 1000
San Antonio, Texas 78205

If intended for Contractor, to:

Angel Staffing, Inc.
1202 E. Sonterra Blvd., Suite #501
San Antonio, TX 78258

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District, which shall be clearly labeled "Metro Health Emergency Medical Staffing" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement 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 Agreement. In no instance will City allow modification whereby City may incur increased risk.

9.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. 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, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

9.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. 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 agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

9.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: San Antonio Metropolitan Health District
P.O. Box 839966
San Antonio, Texas 78283-3966

9.6 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, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

Workers' compensation, employers' liability, general liability and automobile liability policies will

provide a waiver of subrogation in favor of the City.

Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

9.8 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.

9.9 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 Agreement.

9.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

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

9.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Contractor's activities under this Agreement, 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 performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers, or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE

APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

10.2 The provisions of this INDEMNIFICATION 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. Both parties shall promptly advise the other in writing of any claim or demand against them related to or arising out of their activities under this Agreement.

10.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

10.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

11.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.3 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer

or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee, or subcontractor.

11.4 Any attempt to transfer, pledge, or otherwise assign this Agreement without said written approval, shall be void *ab initio* and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

12.1 Contractor covenants and agrees and the City acknowledges that Contractor is an independent Contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same under the direction of Contractor, and shall be responsible for the acts and omissions of its officers, agents, employees, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Contractor, its officers, agents, employees, Contractors and subcontractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City. The parties hereto understand and agree that Contractor shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the City under this Agreement and that the City has no authority to bind Contractor.

XIII. CONFLICT OF INTEREST

13.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns
 - (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.2 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.3 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

XIV. AMENDMENTS

14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XV. SEVERABILITY

15.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to 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 Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

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

XVII. COMPLIANCE

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

XVIII. NONDISCRIMINATION POLICY

18.1 Contractor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small, women, African American, and minority-owned business enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. Contractor agrees that Contractor shall not discriminate against any individual or group on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.

18.2 The Contractor shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Consistent with the foregoing, Contractor agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. Contractor further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- a) Title VII of the Civil Rights Act of 1964, as amended;
- b) Section 504 of the Rehabilitation Act of 1973, as amended;
- c) The Age Discrimination Act of 1975, as amended;
- d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
- e) Fair Labor Standards Act of 1938, as amended;
- f) Equal Pay Act of 1963, P.L. 88-38; and
- g) All applicable regulations implementing the above laws.

XIX. NONWAIVER OF PERFORMANCE

19.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XIV.

No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE

20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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

XXIV. INCORPORATION OF EXHIBITS

24.1 Each of the attachments listed below is an essential part of this Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachment:

Attachment A- Business Associate Agreement

Attachment B- Small Business Economic Development Advocacy Program Requirements

XXV. DEBARMENT

25.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

25.2 Contractor shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXVI. ENTIRE CONTRACT

26.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other Contracts, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties, in accordance with Article XIV. This Agreement shall supersede any and all prior written and oral agreements between the City and Contractor.

XXVII. DISPUTE RESOLUTION

27.1 Mediation. Before any party would initiate any litigation against the other arising out of or relating to this Agreement, unless seeking emergency injunctive relief, the party with a grievance will first seek to resolve any dispute by pre-suit mediation.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXIX. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN,

SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS PROHIBITED

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

XXX. COUNTERPARTS

30.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

EXECUTED and **AGREED** to this the _____ day of _____, 2018.

City:

Contractor:

City of San Antonio

Angel Staffing, Inc.

Colleen M. Bridger, MPH, PhD
Director
San Antonio Metropolitan Health District


Kathy Gallagher
Chief Operations Officer

APPROVED AS TO FORM:

City Attorney

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA Business Associate Agreement** is entered into by and between the City of San Antonio ("Covered Entity"), and **ANGEL STAFFING, INC.**, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on September 1, 2018, whereby BA provides professional services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

- A. **Definitions.** For the purposes of this Agreement, the following terms have the meanings ascribed to them:
- (1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
 - (2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
 - (3) "Parties" shall mean Covered Entity and BA. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.
 - (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

- (5) "Security Rule" shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.
- (6) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, 164, and under HITECH.
- (7) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- (8) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (9) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.
- (10) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. **BA Obligations and Activities.** BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI

unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (9) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Will immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the dated of the breach and date of discover; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all HIPAA Security Rule requirements;
- (13) Comply with the provisions of HIPAA Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances may BA sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code

Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative

activities of the BA.

F. **Term and Termination.**

- (1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of September 1, 2018, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.
- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. **Amendment to Comply with Law.** The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.

H. **Survival.** The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.

- I. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION.** *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE CONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*
- M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. **Entire Agreement.** This Agreement constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the federal law and regulations commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective _____, by the **City of San Antonio**, signing by and through its program manager.

COVERED ENTITY
By City of San Antonio

By: _____

Print Name: Colleen Bridger, PhD, MPH
Print Title: Director
San Antonio Metropolitan Health District

BUSINESS ASSOCIATE:

By: _____

Print Name: Kathy Gallagher
Print Title: Chief Operations Officer

APPROVED AS TO FORM:

City Attorney

ATTACHMENT B

A. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

B. 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.

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 Contractor 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 Contractors 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 Contractors.

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 Contractor'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 Contractor'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 Contractor; 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.

Contractor – 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. 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.

E. 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.

F. 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).