

ORDINANCE 2019-03-21-0235

APPROVING A PROFESSIONAL SERVICES CONTRACT WITH MEDICAL-DENTAL-HOSPITAL BUREAU OF SAN ANTONIO, INC. DBA BUSINESS AND PROFESSIONAL SERVICE TO PROVIDE EMERGENCY MEDICAL SERVICE BILLING AND COLLECTION SERVICES FOR THE SAN ANTONIO FIRE DEPARTMENT FOR THE PERIOD BEGINNING APRIL 1, 2019 AND ENDING ON SEPTEMBER 30, 2024, WITH OPTIONS TO RENEW. REVENUES FROM THIS CONTRACT WILL BE DEPOSITED INTO THE GENERAL FUND IN ACCORDANCE WITH THE ADOPTED BUDGET.

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WHEREAS, on September 1, 2018, the City released a Request for Proposals (RFP) to provide the City with Emergency Medical Service (EMS) billing and collection services; and

WHEREAS, five responses were received and evaluated; and

WHEREAS, the evaluation committee recommends Medical-Dental-Hospital Bureau of San Antonio, Inc. dba Business and Professional Service for award of this contract; and

WHEREAS, this ordinance will authorize a contract with Business and Professional Service for the period beginning April 1, 2019 and ending September 30, 2024 with the option for the City renew for two, additional one-year periods; and

WHEREAS, this contract generates annual revenues of approximately \$25 million which will be deposited into the General Fund; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or the Chief of the San Antonio Fire Department is hereby authorized to execute the Professional Services Agreement for EMS Billing and Collection with Business and Professional Service. The contract is attached hereto and incorporated herein for all purposes as **Exhibit I**.


SECTION 2. Funding of \$1,117,756.11 for this ordinance is available in Fund 11001000, Cost Center 2015010005 and General Ledger 5201040 as part of the Fiscal Year 2019 budget approved by City Council. Future funding for this ordinance is contingent upon City Council approval of subsequent budgets that fall within the term of this contract.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Medical-Dental-Hospital Bureau of San Antonio, Inc. dba Business and Professional Service (B&P) to provide EMS billing and collection services to the City of San Antonio and should be encumbered upon issuance of a purchase order. All expenditures will be in accordance with the Fiscal Year 2019 and subsequent budgets that fall within the term of this contract approved by City Council.

SECTION 4. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

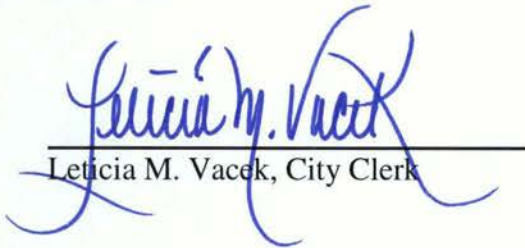
SECTION 5. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

PASSED and APPROVED this 21st day of March, 2019.



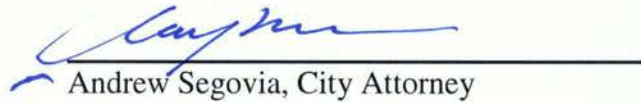
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	30 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12A, 12B, 12C, 14, 16, 17, 18, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37A, 37B, 38A, 38B, 38C, 39A, 39B, 39C, 39D)						
Date:	03/21/2019						
Time:	09:59:57 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a professional services contract with Medical-Dental-Hospital Bureau of San Antonio, Inc., dba Business and Professional Service, to provide Emergency Medical Service billing and collection services for the San Antonio Fire Department for the period beginning April 1, 2019 and ending on September 30, 2024, with options to renew. Revenues from this contract will be deposited into the General Fund in accordance with the Adopted Budget. [Maria Villagomez, Deputy City Manager; Charles N. Hood, Fire Chief]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

LC
03/21/19
Item No. 30

Exhibit I

**PROFESSIONAL SERVICES AGREEMENT
FOR
EMS BILLING & COLLECTION**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas home-rule municipal corporation (“City”), acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2019 and Medical-Dental-Hospital Bureau of San Antonio, Inc. dba Business and Professional Service by and through its Vice President (“Contractor”), both of which may be referred to herein collectively as the “Parties”.

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

I. DEFINITIONS

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

- 1.1 “Basic Aid” or “Aid Only” means the provision of services to a patient at the scene where EMS first encounters the patient, without transporting the patient to another location.
- 1.2 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.3 “Collection Per Account” means the Net Amount Collected divided by the number of transports and basic aid accounts.
- 1.4 “Computer Aided Dispatch record” (“CAD”) is the incident information kept on the City’s Windows-based server farm and contains the date/time stamps and disposition codes.
- 1.5 “Contractor” is defined in the preamble of this Agreement and includes its successors.
- 1.6 “Director” shall mean the Chief of the San Antonio Fire Department (“SAFD” or “Fire Department”).
- 1.7 “Emergency Medical Service” (“EMS”) means the basic and advanced life support service operated by the City’s Fire Department.
- 1.8 EMS electronic Patient Care Report (“ePCR”) is the software application used by Fire Department Emergency Medical Technicians to capture patient information, such as name, age, social security number, and billable address, as well as actions taken for the patient, such as vitals, medicine, equipment and procedures used, and if transported, the hospital to which care was relinquished.

- 1.9 “Finance Manager” means the SAFD Fiscal Division person designated by the Director, from time to time, to administer the financial and reporting portions of this Agreement by the City.
- 1.10 “Gross Collection Percentage” means the Net Amount Collected divided by the Total Amount Billed (no adjustments).
- 1.11 “HITECH” means the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, which was signed into law on February 17, 2009, to promote the adoption and meaningful use of health information technology.
- 1.12 “Local Government Record” means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether the public has access to it or it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.
- 1.13 “Net Amount Billed” means the total revenue billed for a given Transport Month, less adjustments for the following:
- a. Unallowable amounts due to Medicare and Medicaid assignment;
 - b. Unallowable amounts due to Medicare Replacement Insurance;
 - c. Homeless or transient patients;
 - d. Deceased patients with either no estate and no insurance or insolvent estate and no insurance;
 - e. Amounts discharged by order of Bankruptcy Courts;
 - f. Incomplete/inadequate patient information despite the use of extensive state of the art skip-tracing tools which include but are not limited to contacting hospitals/patients within 48 hours of receiving the patient data, utilization of computerized skip tracing applications and services, telephone directories, address service requested envelopes, and Contractor’s databases; and
 - g. Cancellations directed by the City’s Fire Department, EMS Division.
- 1.14 “Net Amount Collected” means the total amount of collections associated with a specific Transport Month, less adjustments for erroneous or over payments, issued refunds, dishonored checks and posting errors.
- 1.15 “Net Effective Collection Rate” or “NECR” means the Net Amount Collected to date for a specific Transport Month divided by the Net Amount Billed in the same Transport Month.
- 1.16 “Operations Manager” means the person designated by the Chief of the San Antonio Fire Department, from time to time, to administer the operational portions of this Agreement on behalf of the City.
- 1.17 “Transport” means conveying a patient from the scene where Fire Department personnel first encounters the patient to a hospital or other location for further care.
- 1.18 “Transport Month” is the month in which a particular patient is transported or provided basic aid.
- 1.19 “Uncollectible Accounts” means:

- a. Medicare and Medicaid unallowable amounts;
- b. Unallowable amounts due to Medicare Replacement Insurance;
- c. Homeless or transient patients;
- d. Deceased patients with either no estate and no insurance or insolvent estate and no insurance;
- e. Amounts discharged by order of Bankruptcy Courts;
- f. Incomplete/inadequate patient information despite use of extensive state of the art skip-tracing tools;
- g. Balances of \$10.00 or less;
- h. Bad debt amounts uncollected in excess of twenty-four (24) months; and
- i. Cancellations directed by the City's Fire Department, EMS Division.

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on April 1, 2019 and terminate on September 30, 2024.
- 2.2 City shall have the option to renew this Agreement on the same terms and conditions for two (2) additional one (1) year periods. Renewals shall be in writing and executed by both City and Contractor. Renewal shall be subject to the approval of the City Council by passage of an ordinance.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

III. SCOPE OF SERVICES

- 3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.
- 3.2 Contractor shall provide all services as set forth in Contractor's Proposal attached hereto as Exhibit "A" and incorporated by reference herein. Contractor understands and agrees that Exhibit "A" is a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the Contractor as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this Agreement.
- 3.3 The terms of this Agreement shall control where there is any conflict between the terms of the Contractor's Proposal and the terms of this Agreement.
- 3.4 All work performed by Contractor hereunder shall be performed to the satisfaction of Director or Operations Manager. The determination made by Director or Operations Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director or Operations Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director or Operations Manager; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

- 3.5 Contractor shall perform, using its best efforts through lawful means, professional billing and collection services of EMS fees for City. It is understood and agreed that this is a contract for professional billing and collection services only, and not an assignment or transfer of any property or ownership interest in and to the EMS accounts or monies realized therefrom. City's current EMS rates for billable services are listed on Exhibit "B" – EMS Rates for Billable Services. These rates are subject to change and may be amended from time to time by City. City shall provide notice of changed rates in writing to Contractor in advance of the change. The new rates shall be attached hereto and automatically incorporated herein.
- 3.6 Contractor shall provide for the electronic transfer of information from the EMS electronic Patient Care Reporting (ePCR) for all billable transports and aid-only accounts from the City. Contractor shall download or receive daily an extract of the patient billing information by extracting the data from a data file created for this purpose and updated daily by City. The Contractor must complete a security background check for all appropriate employees before access will be granted. Contractor's application/service environment must efficiently integrate with City's environment through the use industry standard technologies. Data migration shall meet all federally required security under the HIPAA privacy and Security Rules and other state and federal laws or guidelines as appropriate. Contractor must be able to readily adapt to changes and upgrades to ePCR, with advance notice from City. System adaptations on the part of Contractor for any and all changes and upgrades to the ePCR shall be made promptly, but in no event, shall exceed thirty (30) days from the notice of the changes and upgrades from City. Contractor shall provide City with full and complete access to all billing and patient information at all times. Billing and patient information shall be accessible by City directly from City's EMS Administrative Office.
- 3.7 Contractor shall use its City approved application to generate invoices to patients for whom EMS services have been provided, using the EMS fees approved by City Council. Contractor shall send patients a minimum of 3 invoices, exclusive of returned mail. Contractor shall send the first invoice within 10 days after receipt of the complete patient record. Incomplete patient records shall be processed as soon as possible. Addresses returned as invalid after verification by a mailing service shall constitute the initial mailing. Contractor shall send the second and subsequent invoices at or within 30 day intervals. Contractor shall attach an assignment of claims and release of information form to the first invoice, where appropriate, and included a description of the services rendered. Invoices shall include City's lock box address as the address to which payments should be sent. For prompt processing of mail returns, the Contractor's physical address will remain as the return address on mailing envelopes. Contractor shall not invoice patients for amounts deemed unallowable by Medicare, Medicaid or pursuant to Medicare Replacement Insurance.
- 3.8 Contractor shall identify non-billable transports and aid-only accounts (incomplete name and address information). Contractor shall attempt to locate billing information using state of the art skip-tracing technology, including, but not limited to, contacting hospitals and patients, within 48 hours of receipt of the patient data, using sources such as City Directories, telephone directories, address service requested envelopes, online skip-tracing sources, and Contractor's database. If billing information is obtained, Contractor shall generate invoices in accordance with section 3.5 above.
- 3.9 Contractor shall assist patients with insurance claim preparation, proper assignment of claim, corrections and re-filing of rejected claims.

- 3.10 Contractor shall process all insurance claim information within 5 working days of receipt. Processing includes electronically filing claims where possible, or filing by paper where required, proper assignment of claim, correction and re-filing of rejected claims. Contractor shall research all rejected Medicare, Medicaid and private insurance claims in order to re-file based on a better diagnosis, and shall initiate the processes necessary to and shall refile/appeal if additional information is obtained.
- 3.11 Contractor shall provide for automatic billing to Medicare, Medicaid and private insurance companies by transferring patient records in an electronic format where accepted.
- 3.12 Contractor shall process EMS payments through utilization of a lockbox account with the City's depository bank. In the event payments are received at Contractor's local office, Contractor shall process, including endorsement if necessary, and deposit all payments within 24 hours into City's lock box account. If Contractor receives cash, Contractor shall issue a receipt to the payor. Contractor shall request all third party insurers, such as private insurance, Medicare or Medicaid, to tender EMS payments via wire transfer to the City's lock box account. To facilitate wire transfer operations, the City will authorize daily online computer inquiries into the lockbox account through the bank. Should Contractor receive a payment that combines monies owed to City with those owed to other parties, Contractor shall deposit City's portion into City's lockbox within 3 business days. Contractor shall accept all major credit cards for payment of EMS services. All fees associated with credit card payments, including but not limited to, discount fees, shall be at the Contractor's sole expense. All lockbox fees shall be at City's sole expense.
- 3.13 Contractor shall assist patients in establishing partial payment agreements, where necessary, and shall send patients balance due statements within 5 working days of receipt of partial payments. Contractor shall work with the Finance Manager to establish criteria and/or guidelines for accepting partial payments. Contractor shall provide said guidelines within 15 days of the effective date of this Agreement. The Finance Manager shall review and provide final guidelines to Contractor within 30 days of the effective date of this Agreement.
- 3.14 Contractor shall process all dishonored checks, including deletion of the credit from the payment record, and shall re-invoice the patient.
- 3.15 Contractor shall research payments received that do not clearly identify the patient and EMS record in order to apply the credit to the correct account.
- 3.16 Contractor shall process refunds for all erroneous or over payments. Contractor shall pay for the refunds out of its own account and shall be reimbursed for same by City at the time City pays Contractor's fees.
- 3.17 Contractor shall aggressively pursue accounts deemed delinquent according to criteria agreed to by City, including a telephone collection effort staffed by collection professionals. All collection efforts are to be performed in-house by Contractor's staff. Collections may not be outsourced or subcontracted without City's prior approval. With City's prior written approval, Contractor shall refer delinquent accounts to major credit reporting bureaus if Contractor deems that all collection efforts have been exhausted without success.
- 3.18 Contractor shall identify Uncollectible Accounts that have not responded to collection efforts. Contractor shall document collection efforts for each account and submit to City as required by City for consideration of adjustment and annual financial reporting requirements.

3.19 Contractor shall establish a comprehensive reporting system that will enable City to monitor Contractor's performance. Reports must be designed to provide data required to accurately measure performance. Reports must be provided on a regular schedule and in a format approved by the City. At City's request, Contractor shall provide additional or different reports than those stated herein, or as modified by City. Contractor shall provide the reports indicated below.

a. Monthly Financial Report. Contractor shall submit a financial report to the Finance Manager on or before the 4th business day of each month, which shall, at a minimum, contain the following information:

- Summary by transport month of payments received during the preceding month shown applied to their transport month.
- Detailed report for each transport month since contract inception (to-date) including:
 - By Transport Type (Aid-Only, BLS, ALS-1 and ALS-2)
 - Number of EMS cases billed to date;
 - Gross amount billed to date;
 - Prior payments to date;
 - Preceding month payments;
 - Total mandated contractual adjustments for transport month to date; and
 - Lockbox monthly statement.
- Reconciliation of payments received during the preceding month by category (i.e., Medicare, Medicaid, commercial insurance, private pay), return items, and other fees to the Lockbox monthly statement.
- Reconciliation of payments received directly by City in different account than lockbox, if any, for the preceding month.

b. Monthly Refund Report. Contractor shall submit to the Finance Manager on or before the 4th business day of each month, a Monthly Refund Report for refunds issued by Contractor during the preceding month which shall, at a minimum, contain the following information for the preceding month:

- Responsible party on the account;
- EMS case number;
- Contractor payment reference;
- Refund amount; and
- Date of refund.

c. Vendor Performance Report. Contractor shall submit a Vendor Performance Report to the Finance Manager on or before the 10th calendar day of each month, which shall, at a minimum, contain the following information detailed by transport month:

- Gross amount billed;
- Number of EMS cases billed by transport type to date;
- Contractual adjustments by category (i.e., Medicare, Medicaid, Medicare Replacement Insurance non-allowed amounts, homeless patients, etc.);
- Net amount billed;
- Collections from all sources by category (i.e. Medicare, Medicaid, commercial insurance, private pay);

- Total gross collections;
 - Refunds and deductions due to dishonored checks;
 - Total net amount collected;
 - Net effective collection rate; and
 - Collection per account.
- d. Monthly Transport Report. Contractor shall provide on or before the 10th calendar day of each month a monthly report showing the number of transports for that month and percentage increase/decrease by comparison to the same month in the previous calendar year. This report shall show the months by Fiscal Year starting in FY 2010.

The following reports listed below as "e" through "h" shall be provided upon request:

- e. Quarterly Analysis. Contractor shall be prepared, upon request, to submit a Quarterly Analysis to the Finance Manager on or before the 10th calendar day of January, April, July and October which shall, at a minimum, contain the following information for Fiscal Year to Date (October to date):

Per Transport FY, by Transport Type (Aid Only, BLS, ALS-1 and ALS-2), and by collection source category (i.e., Medicare, Medicaid, commercial insurance, private pay):

- Number of EMS Cases Billed by Transport Type to Date;
- Total Amount Billed to Date;
- Gross Collection Rate to Date; and
- Collection per account.

To date shall mean:

- January Report: October – December
- April Report: October – March
- July Report: October – June
- October Report: October – September (full Fiscal Year)

- f. Cancellation Report/Inactive Unattached Accounts. Contractor shall be prepared, upon request, to submit reports on uncollectible accounts. The Finance Manager will direct Contractor on the format and dates of service for the reports. Criteria for the report shall include those listed in the definition of Uncollectible Accounts provided in Article I of this Agreement. Contractor shall code the accounts as submitted to City as Uncollectible. The code shall be identified with a date for audit-trail purposes. Contractor shall continue to keep these accounts in the system for a minimum of seven years or other term agreeable by Contractor and City. Any monies later collected on accounts deemed Uncollectible will be reported as "Recovery on Bad Debt".
- g. Complaint Log. Contractor shall maintain a record of all complaints and correspondence requiring action or response received with regard to City's ambulance service, and Contractor's billing or collection services pursuant to this Agreement, including complaints from patients, their representatives, Medicare/ Medicaid, other insurers, and representatives of City. Complaints regarding ambulance service shall be forwarded immediately to the SAFD Assistant Chief of EMS. A written description of the procedure for handling these complaints and correspondence, which is mutually acceptable to City and Contractor, shall be maintained by the SAFD Assistant Chief of EMS.

h. Monthly Data Accuracy Collection Report. Contractor shall be prepared, upon request, to provide a monthly data accuracy report to the SAFD Assistant Chief of EMS on or before the 10th calendar day of each month. This report shall identify, at a minimum, the following information and be in a format approved by the SAFD Assistant Chief of EMS or designee:

- The percentage of missing data entry for each month, and cumulative percentage for the Fiscal Year, by each SAFD personnel.
- The percentage of inaccurate data entry for each month, and cumulative percentage for the Fiscal Year, by each SAFD personnel.

3.20 Contractor shall maintain a centrally located office within the City of San Antonio, Texas for the processing of all mail, servicing walk-in customers, and responding to all correspondence. Contractor shall make billing data readily available from this local office.

3.21 Contractor shall respond to and resolve all patient inquiries regarding the billing and collection of EMS fees within 48 hours and resolve complaints within 5 working days.

3.22 At City's option and subject to all applicable statutes, rules, and regulations regarding HIPAA (defined below), Contractor shall process third party requests for copies of medical bills pursuant to Chapter 552 of the Government Code, Texas Public Information Act, at a cost of no more than \$.10 per page, plus the actual cost of supplies and postage. Contractor must have an authorization for release of records signed by the patient prior to any such release. The fees allowable for costs of reproduction, supplies and postage are intended to reimburse Contractor for costs incurred and do not represent revenue under this Agreement. All additional charges shall be in accordance with the allowable charges pursuant to Chapter 552 of the Government Code, Texas Public Information Act.

3.23 Except as provided for herein, and as necessary to carry out the course and scope of the services required of Contractor, Contractor shall not release any records created or received during the course of performance of the Agreement to any person or entity other than City or City's designated agent, without City's written permission, unless required to do so by a Court of competent jurisdiction. Contractor shall transmit to the Operations Manager all written requests for records within 24 hours of receipt.

3.24 Contractor shall establish fully auditable billing, collection and accounts receivable systems in accordance with Generally Accepted Accounting Principles (GAAP) and Governmental Accounting Standards Board (GASB) guidelines, as approved by City, and accessible by City or its designated agents at all times. Contractor shall provide a copy of its cash handling policy to the Finance Manager upon request. Contractor shall provide said policy within 45 days of the effective date of this Agreement.

3.25 Contractor shall continually review Medicare and Medicaid policies, rules, regulations, and laws pertaining thereto, and shall immediately incorporate new requirements or changes into its procedures, and make prompt, appropriate recommendations to City to maximize revenue. Contractor shall keep City's Finance and Operations Managers aware of any anticipated changes, or actual changes in the laws pertaining to collections, Medicaid, Medicare and private insurance, or other factors, that may impact City's revenue.

3.26 Contractor shall continually review industry technical standards for billing and collection services, and shall seek to incorporate new standards within 24 months from their introduction

into their business industry. Contractor shall keep the City's Finance and Operations Managers aware of any anticipated changes, actual enhancements, or other modifications to the Contractor's standard operating procedure that may impact City's revenue or provide enhanced level of service.

- 3.27 City may direct the Contractor to pursue legal action against any debtor or may pursue such action itself after notification of Contractor. Contractor shall not institute any legal action pursuant to collection services related to this Agreement without the express written direction of the City Attorney.
- 3.28 Contractor shall provide the Operations Manager with feedback, consultation and advice in recordkeeping for the paramedics as it deems appropriate for increased efficiency in billing and collections. Additionally, Contractor will assist City in isolating recordkeeping problems by periodically, but no less frequently than quarterly, or upon request, auditing the individual paramedic unit response forms for clarity and completeness and providing to the City a copy of the results of such audits within sixty (60) days after initiation of the audit. At the Operations Manager's request, Contractor shall provide training programs, as necessary, to assist personnel in adequate recordkeeping practices. Training programs shall be scheduled in accordance with the personnel's schedules.
- 3.29 Contractor shall maintain the highest professional standards in all communications with the public on behalf of City.
- 3.30 Contractor shall meet with the Operations Manager and Financial Manager as deemed necessary by City, to keep them apprised of conditions affecting this Agreement.
- 3.31 Contractor shall discharge its duties under this Agreement as a prudent expert solely in the interests of City with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Agreement and in a manner that avoids conflicts of interest and self-dealing.
- 3.32 Contractor acknowledges that City receives enhanced funds from Medicaid through a Supplemental Payment Program. The revenues received lump-sum annually through this program may be deposited into the same lockbox described in Section 3.12 above. Contractor acknowledges, understands, and agrees that it shall not be entitled to receive and will not receive any those collected revenues and that Contractor will only receive compensation pursuant to Article IV. Compensation of this Agreement on payments made by TX HHSC/TMHP through TX MMIS system for procedures billed by Contractor. Upon request from SAFD Fiscal Division, Contractor shall provide additional information to City to assist City with facilitating the Contract described above.

IV. COMPENSATION TO CONTRACTOR

- 4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed 8.4% of the Net Amount Collected as total compensation, to be paid to Contractor.

- 4.2 Contractor shall submit invoices to City on or before the 4th business day of each month, along with its monthly Reports as required by section 3.19 in a format acceptable to City. City shall have the right to require that certain information be included with the invoice, such as City contract identifying numbers. City shall pay Contractor within 15 days of receipt of an invoice and approval by Director. City shall make available to Contractor, in a timely manner, those bank statements that reflect deposits in the lock box to enable Contractor to prepare its invoice.
- 4.3 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1 above, and as provided for elsewhere herein. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above plus refunds per section 3.16, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefor.
- 4.4 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Contractor following written approval of the final work products and services by Director. 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.
- 4.5 The fees set forth in this Article are payable solely from the Net Amount Collected by Contractor. Contractor acknowledges and agrees that the City's liability for any and all payments hereunder shall be limited by this provision. No other funds are or will be appropriated for this Agreement.

V. OWNERSHIP OF DOCUMENTS

- 5.1 Contractor acknowledges and agrees that all local government records created or received in the transaction of official business, or the creation or maintenance of which were paid for with public funds, are public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor, including, but not limited to any database created by Contractor containing identifying patient information in furtherance Contractor's work hereunder.
- 5.2 Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, shall belong to and be the property of City. Contractor shall be required to turn over to City, all such records. Contractor may retain a copy of such records with City's consent; however, all such records shall remain confidential and may not be released without City's prior written consent. This provision shall survive termination of this Agreement.
- 5.3 Contractor understands and acknowledges that as the exclusive owner of any and all such local government records, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION & AUDIT

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The cost and expense incident to any audits hereunder shall be borne by the City.
- 6.2 Retention Period. Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of six (6) years from the date of final payment under this Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention period.
- 6.3 Contractor further agrees to include in its subcontractor agreements, if any, a provision to the effect that subcontractor agrees that the City shall, until the expiration of six (6) years after final payment under the subcontract have access to and right to examine any books, documents, papers and records of such subcontractor, involving transactions to the subcontract, and further that the City shall have access during normal working hours to all subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this article.
- 6.4 Nothing herein shall be construed as limiting City's rights of access to any examination of books, documents, papers and records, which may exist independently of this contract provision.
- 6.5 City shall have the right to conduct one or more audits of Contractor's books, documents, papers and records and/or its operations under this Agreement at any time during this Agreement. City shall give Contractor ten (10) calendar days of prior written notice of any such audit. Any audits conducted hereunder may be made by the City Auditor or his designated staff, or by a third party auditor of City's choice. Any funds discovered pursuant to an audit hereunder as due to City by Contractor must be paid with interest by Contractor to City within 30 days notice thereof. Interest shall accrue on said funds from the date such funds should have initially been paid to City at the rate of 12% annually, or the maximum rate allowed by law, whichever is less, until paid. If the auditor's report demonstrates that a refund is due to Contractor, City shall pay Contractor the amount due within 30 days receipt of such report. No interest shall be included in the amount paid by City to Contractor.
- 6.6 Additional security audits may be conducted by the City's IT Security team as required by the

HIPAA/HITECH. Contractor shall provide audited financial statements and a report on the processing of transactions as required by the Statement on Auditing Standards Soc II, Type II. These reports must be prepared by an independent auditor and provided each year.

- 6.7 Contractor shall take all necessary precautions to ensure that all cash income received from any source and non-cash income, (i.e., credit cards), are immediately recorded.

VII. TERMINATION

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

- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon no less than 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice. Contractor shall have the right to terminate this Agreement upon no less than 180 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this 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 XII. Assignment and Subcontracting;
- 7.3.2 Contractor is adjudicated a voluntary or involuntary bankrupt;
- 7.3.3 Contractor institutes or suffers to be instituted any proceeding for a reorganization or rearrangement of Contractor's affairs;
- 7.3.4 Contractor makes an assignment for the benefit of creditors;
- 7.3.5 Contractor becomes insolvent or has a receiver of Contractor's assets or property appointed; or
- 7.3.6 Contractor commits a material breach of the terms of this Agreement, or any series of breaches, which while not material in and of themselves, constitute a material breach taken as a whole, as determined solely by City.

- 7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default to the City's satisfaction within such 15 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. City shall also have the right to offset the cost of said new Agreement with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;

- 7.4.2 Failing to perform or failing to comply with any covenant herein required other than a material breach as provided in section 7.3.6 above; or
- 7.4.3 Performing unsatisfactorily, as determined solely by Director.
- 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 Regardless of how this Agreement is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested by City.
- 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 damages from or otherwise pursue Contractor for any default hereunder or other action.
- 7.9 Continued Billing and Collection Efforts After Agreement Expiration. Notwithstanding the foregoing, if this Agreement is not terminated for cause or convenience, but ceases due to the expiration of its term, Contractor shall continue collection efforts for accounts placed with Contractor prior to the expiration date for a period of 90 days from the date of expiration, and may retain all records needed to resolve the accounts for said period, unless notified otherwise by City. All terms and conditions of this Agreement shall apply to Contractor's billing and collection efforts during said 90 day period. This section 7.9 shall survive the expiration of this Agreement.

VIII. NOTICE

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

If intended for Contractor, to:

Business & Professional Service
Attn: Mr. Thomas McDonald, Vice President
621 North Alamo Street
San Antonio, Texas 78215

IX. GUARANTEED NET EFFECTIVE COLLECTION RATE AND PERFORMANCE DEPOSIT

9.1 Guaranteed Net Effective Collection Rate.

- a. Rate Guaranteed. Contractor guarantees that it will achieve a minimum NECR of **fifty-five percent (55%)** for a given transport month after twelve months of collection efforts for that transport month. For example, if \$3,000,000.00 is the Net Amount Billed for the transport month of January 2018, Contractor guarantees collection of \$1,680,000.00 by the end of January 2019 for those invoices issued in January 2018.
- b. Performance Deposit Deduction. Contractor agrees that if it has not achieved a minimum NECR of **fifty-five percent (55%)** for a transport month after twelve months of collection efforts for that transport month, City shall be entitled to deduct a sum from the performance deposit described below and retain said sum. City may exercise the option to deduct said sum from Contractor's fee for the following month and any subsequent months until City is made whole, and/or accept payment from Contractor for said sum. The amount the City shall be entitled to deduct is calculated as follows:
 - Guaranteed Net Effective Collection Rate amount - Actual Collected = Amount Due To/To Be Deducted By City
 - Using the example in section 9.1(a), if \$3,000,000.00 is the Net Amount Billed, and the Actual Collection Rate is 54.0%, City would be entitled to deduct and retain \$60,000.00 from either Contractor's fee or performance deposit or combination thereof.
 - Example: $\$3,000,000.00 \times 55.0\% = \$1,650,000.00$ (guaranteed NECR)
 $\$3,000,000.00 \times 54.0\% = \$1,620,000.00$ (actual collection rate)
 $\$1,680,000.00 - \$1,650,000.00 = \$30,000.00$ (sum due to/to be deducted by City)
- c. Re-negotiating Rate. Parties recognize and agree that factors beyond Contractor's control may affect Contractor's ability to meet its Guaranteed NECR, such as EMS fee increases and changes to insurance rules and regulations and laws pertaining to Medicare and Medicaid. SAFD shall notify Contractor when contemplating EMS fee increases. Parties agree that should such changes occur that will materially affect Contractor's ability to meet its guarantee, Contractor will notify the City in writing and provide supporting information.
- d. Upon such notification, parties will commence discussions to renegotiate the guaranteed rate

within 30 days. The NECR guarantee and Performance Deposit Deduction will be temporarily suspended beginning 30 days after notification is given.

Any changes to the guaranteed NECR shall be evidenced by written amendment to this Agreement, in accordance with Article XVI. Amendments. The NECR guarantee and Performance Deposit Deduction will reinstate on the date and as specified in the written amendment.

9.2 Performance Deposit.

- a. Letter of Credit. Contractor shall furnish City with a clean, irrevocable standby letter of credit in the amount of \$100,000. Such letter of credit must be in form and content approved by City, and issued by a commercial banking institution acceptable to City and authorized to conduct business in Texas, and conditioned on its automatic restoration to \$100,000 in the event of a draw down by City. Contractor shall deliver the Letter of Credit to City's Finance Manager within 10 days following the City's execution of this Agreement. The named beneficiary shall be the City of San Antonio, Texas, permitting the City to draw thereon upon demand. Contractor shall maintain said Letter of Credit until February 1st of the year following expiration of this Agreement.
- b. Alternative Form of Performance Deposits. The Parties may agree to an alternative form of performance deposit, not described herein, including but not limited to a Certificate of Deposit in the amount of \$100,000.00, issued by a commercial banking institution authorized to conduct business in Texas, for a 30 day period with an automatic roll-over provision. Any alternative form of performance deposit must be conditioned on its automatic restoration to \$100,000.00 in the event of a draw down by City. Any Alternative Form of Performance Deposits shall be of equal or greater value and liquidity as described in sections 9.2a and 9.2b.
- c. Should Contractor fail to produce said performance deposit as required herein, Contractor shall be in default of this Agreement. In the event of said default, City may, at its option, terminate this Agreement in whole or in part.

9.3 Contractor shall be obligated to maintain said Performance Deposit described in section 9.2 above until February 1st of the year following expiration of this Agreement, including any renewal terms, if exercised. In the event the Performance Deposit takes the form of a Certificate of Deposit, Parties agree that the Certificate may be retained until the expiration of its 30 day term, should such expiration date fall after the first of the month, to avoid a penalty for early withdrawal. City shall be entitled to measure Contractor's performance through December 31st of the year preceding the final year of the contract against the Performance Guarantee as provided herein, and shall be entitled to deduct sums from the performance deposit for any deficiency as provided in this Article IX. Any unused portions of a performance deposit shall be returned to Contractor.

9.4 The provisions of this Article IX shall survive termination or expiration of this Agreement.

9.5 Performance Guarantee Retroactive. Parties acknowledge that Contractor provided EMS billing and collection services to City under a prior contract, which expired on March 31, 2019. Contractor agrees that the guarantee stated in section 9.1 above shall apply retroactively to accounts referred to Contractor under the prior agreement between the Parties. Additionally,

Contractor's retroactive guarantee shall be backed by the performance deposit described in Section 9.2 above.

X. INSURANCE

- 10.1 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 Fire Department, which shall be clearly labeled "EMS Billing and Collection Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Fire Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 10.2 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.
- 10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this 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. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Agreement	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Cyber Liability- To cover a business' liability for a data breach	<u>\$1,000,000 per occurrence</u>

in which the firm's customers' personal information, such as Social Security or credit card numbers, is exposed or stolen by a hacker or other criminal who has gained access to the firm's electronic network.	
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000.00 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.
6. Commercial Crime Insurance- employee dishonesty coverage; forgery or alteration coverage; computer fraud coverage; funds transfer fraud coverage; money and securities coverage; and money orders and counterfeit checks	\$1,000,000 per occurrence

- 10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this 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.
- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

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

- 10.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to

contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional 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, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 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.
- 10.12 Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

- 11.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to **CONTRACTOR'S** activities under this 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 the rights or performance of the 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.** In addition, Vendor agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.
- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Co shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.
- 11.3 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 Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this 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.
- 12.2 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 Council.
- 12.3 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 Council, as evidenced by passage of an ordinance. 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.
- 12.4 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. Termination, 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.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that 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.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

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

14.2 **Definitions.**

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

14.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City 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.

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

- 14.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.
- 14.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective respondents and subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.
- 14.2.6 **Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, 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.
- 14.2.7 **City** – refers to the City of San Antonio, TX.
- 14.2.8 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.
- 14.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have

the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

- 14.2.10 **Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.
- 14.2.11 **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.
- 14.2.12 **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.
- 14.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.
- 14.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.
- 14.2.15 **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.

- 14.2.16 **Good Faith Efforts** – documentation of the Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)
- 14.2.17 **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).]
- 14.2.18 **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.
- 14.2.19 **Individual** – an adult person that is of legal majority age.
- 14.2.20 **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.”
- 14.2.21 **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.

14.2.22 **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.

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

14.2.24 **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.

14.2.25 **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.

14.2.26 **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).

- 14.2.27 **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.

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

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

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

- 14.2.31 **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.

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

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

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

(SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

- 14.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.
- 14.2.36 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- 14.2.37 **Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.
- 14.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – 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).
- 14.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- 14.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.
- 14.2.41 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE’s performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- 14.2.42 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size

standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

- 14.2.43 **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.
- 14.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.
- 14.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.
- 14.2.46 **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.
- 14.2.47 **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.
- 14.2.48 **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.
- 14.2.49 **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.

14.3 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:

- 14.3.1 Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
- 14.3.2 Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;
- 14.3.3 Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
- 14.3.4 Contractor shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
- 14.3.5 Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.

- 14.3.6 Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four 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.
- 14.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, 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.
- 14.3.8 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 has 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.
- 14.4 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:
- 14.4.1 **M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Contractor agrees to subcontract at least **thirteen percent (13%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).
- 14.4.2 The Subcontractor/Supplier Utilization Plan which Contractor submitted to City with its response for this contract and that contains the names of the certified M/WBE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement as Exhibit "C".
- 14.4.3 In the absence of a waiver granted by the SBO, failure of a Prime Contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

- 14.5 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.
- 14.6 Prompt Payment. Upon execution of this contract by Contractor, Contractor shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Contractor's reported subcontract participation is accurate. Contractor shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten 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.
- 14.7 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:
- 14.7.1 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;
- 14.7.2 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;
- 14.7.3 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;

14.7.4 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

14.7.5 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).

XV. INTELLECTUAL PROPERTY

15.1 Contractor agrees to abide by the following regarding intellectual property rights:

15.2 Contractor shall pay all royalties and licensing fees. Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used by Contractor in its performance under this Agreement. Contractor shall defend all suits for infringement of any Intellectual Property rights. Further, if Contractor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

15.3 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware, infringe upon any United States patent or copyright, Contractor will immediately either:

15.3.1 Obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be; or

15.3.2 Alter the programs, hardware, or both the programs and hardware, so that the alleged infringement is eliminated, and

15.3.3 Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware, while the dispute is pending.

- 15.4 Contractor further agrees to:
- 15.4.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
 - 15.4.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation- related expenses, and
 - 15.4.3 Indemnify the City against any monetary damages and/or costs awarded in such suit.
- 15.5 Provided that:
- 15.5.1 Contractor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Contractor agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
 - 15.5.2 the Software or the equipment is used by the City in the form, state, or condition as delivered by Contractor or as modified without the permission of Contractor, so long as such modification is not the source of the infringement claim, and
 - 15.5.3 the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Contractor with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Contractor assumes responsibility under this section.

XVI. AMENDMENTS

- 16.1 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.
- 16.2 Notwithstanding the foregoing, the City Manager is hereby authorized to amend this Agreement without further action of the City Council to:
- a. reflect a change in Contractor's Guaranteed Net Effective Collection rate, and to reflect a lower fee due to Contractor, in accordance with Section 9.1(c);
 - b. amend Exhibit B - EMS Rates for Billable Services, provided changes in those rates have otherwise been approved by City Council pursuant to an ordinance; and
 - c. accept an alternative form of performance deposit as provided in Section 9.2(b).

Such amendments shall be in writing, and signed by the City Manager or her designee, and in the case of amendments made pursuant to section 16.2(a) and 16.2(c) by Contractor, as well.

XVII. SEVERABILITY

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 Agreement 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.

XVIII. LICENSES / CERTIFICATIONS

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

XIX. COMPLIANCE

- 19.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations, including but not limited to the Health Insurance Portability and Accessibility Act of 1996, as amended ("HIPAA"), including the Privacy Rule, the Security Rule, and the Electronic Transportation Standards 45 CFR 160, 162, 164, respectively). In accordance therewith, Contractor shall execute the Business Associate Agreement attached hereto and incorporated herein as Exhibit "D" – Business Associate Agreement, in conjunction with the execution of this Agreement. Contractor shall provide City with copies of Contractor's policies and procedures pertaining to HIPAA upon request.
- 19.2 Contractor and City further agree that should any dispute or questions arise respecting the true construction or meaning of these documents, the same shall be decided by City and such decision shall be binding and conclusive upon Contractor.
- 19.3 Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XX. NONWAIVER OF PERFORMANCE – FORCE MAJEURE

- 20.1 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 XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
- 20.2 Neither City nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to a Force Majeure Event (as defined below), the effect of

which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Force Majeure Event" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party and includes, but is not limited to fire, flood, earthquakes, storms, lightning, natural disaster, epidemic, war, riot, civil disturbance, sabotage, terrorism and governmental actions. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

XXI. LAW APPLICABLE & LEGAL FEES

- 21.1 **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.**
- 21.2 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.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXII. LEGAL AUTHORITY

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.

XXIII. PARTIES BOUND

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.

XIV. CAPTIONS

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.

XXV. NON-DISCRIMINATION

As a party to this contract, Contractor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate 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.

XXVI. CONFLICT OF INTEREST

- 26.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 26.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XXVII. PROHIBITED CONTRIBUTIONS

- 27.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a “high-profile” discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Contractor understands that if the legal signatory entering the contract has made such a contribution, the City may not award the contract to that contributor or to that contributor’s business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 27.2 Contractor acknowledges that the City has identified this Agreement as high profile.
- 27.3 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

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. Consultant 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 Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXIX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 29.1 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.
- 29.2 "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.
- 29.3 "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.
- 29.4 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.

XXX. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the 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 exhibits:

- Exhibit A – Contractor's Proposal
- Exhibit B – EMS Rates for Billable Services
- Exhibit C – SBEDA Subcontractor/Supplier Utilization Plan
- Exhibit D – Business Associate Agreement
- Exhibit E – City's RFP

XXXI. ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

Medical-Dental-Hospital Bureau of San Antonio, Inc. dba Business and Professional Service

(Signature)



(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: **Thomas McDonald**
Title: **Vice President**
Date: **February 18, 2019**

Approved as to Form:

Assistant City Attorney