RKN
04/14/16
Item 24 A

AN ORDINANCE 2016-04-14-0289

**APPROVING A FINANCIAL ADVISOR SERVICES CONTRACT WITH COASTAL SECURITIES, INC., TO PROVIDE FINANCIAL ADVISOR SERVICES IN CONNECTION WITH THE CITY'S FINANCINGS FOR A TERM BEGINNING APRIL 25, 2016 AND ENDING MARCH 31, 2019, WITH THE OPTION TO EXTEND FOR ONE (1) ADDITIONAL TWO (2) YEAR TERM.**

* * * * *

**WHEREAS,** a Request for Proposal ("RFP"), soliciting proposals for the provision of Financial Advisor services to the City was released on October 19, 2015; and

**WHEREAS,** on November 17, 2015, eight (8) firms submitted proposals for provision of Financial Advisor services, which were received by the City and evaluated by an evaluation committee; and

**WHEREAS,** the evaluation involved, among other inquiries, assessment of the services to be provided, and any related fees for such services; and

**WHEREAS,** in addition to evaluating the proposals, all of the firms submitting proposals were interviewed by the evaluation committee, in order to address any outstanding issues and to gain a clear perspective of each firm's ability to service the City's unique and varied requirements; and

**WHEREAS**, City Staff has recommended that the City enter into a Financial Advisor Services Contract with Coastal Securities, Inc., with the term of the contract to begin April 25, 2016 and end March 31, 2019, and containing an option to extend for one (1) additional two (2) year term; and

**WHEREAS**, following discussion and deliberations by the City Council on the matter, the City Council is of the opinion that the recommendation of City Staff should be accepted and followed; **NOW THEREFORE:**

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

**SECTION 1.** The Financial Advisor Services Contract between the City and Coastal Securities, Inc. ("Coastal FA Contract"), a true and correct copy of which, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**, is hereby approved. The City Manager or her Designee, or the Chief Financial Officer (CFO) or his Designee, are hereby authorized to execute the Coastal FA Contract containing the same or substantially the same terms and conditions as those set forth in **Attachment I.**

RKN
04/14/16
Item 24 A

**SECTION 2**. The City Manager or the CFO is authorized to execute the Coastal FA Contract. The City Manager or the CFO is authorized twenty (20) business days from the effective date of this Ordinance within which to execute a contract, substantially according to the terms and conditions set forth in **Attachment I.** If said contract is not executed within said twenty (20) business days, or if the parties cannot agree to terms of such contract that are in substantially the same form as **Attachment I** within such time, then there shall be no authority to execute said contract unless there is subsequent City Council approval.

**SECTION 3.** The City's Financial Advisors are paid from the proceeds derived from the issuance of obligations and other financings; therefore, there is no impact on the City's operating budget and no financial language is required for this ordinance.

**SECTION 4.** This ordinance shall take effect on April 25, 2016.

***PASSED AND APPROVED*** this 14th day of April, 2016.

M A Y O R
Ivy R. Taylor

**ATTEST:**

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

Martha G. Sepeda, Acting City Attorney

| | |
|---|---|
| **Agenda Item:** | **24A ( in consent vote: 24A, 24B )** |
| **Date:** | 04/14/2016 |
| **Time:** | 10:52:07 AM |
| **Vote Type:** | Motion to Approve |
| **Description:** | An Ordinance authorizing the execution of a contract with Coastal Securities, Inc. to provide Co-Financial Advisor Services in connection with various of the City's financings for a period to commence April 1, 2016 and terminate March 31, 2019, with an option to extend the contract for one additional two-year period under the same terms and conditions. |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Ivy R. Taylor | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | | |
| Alan Warrick | District 2 | | x | | | | |
| Rebecca Viagran | District 3 | | x | | | x | |
| Rey Saldaña | District 4 | | | x | | | |
| Shirley Gonzales | District 5 | | | x | | | |
| Ray Lopez | District 6 | | x | | | | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | | x | | | |
| Joe Krier | District 9 | | | x | | | |
| Michael Gallagher | District 10 | | x | | | | x |

| | |
|---|---|
| **Agenda Item:** | **24A ( in consent vote: 24A, 24B )** |
| **Date:** | 04/14/2016 |
| **Time:** | 10:51:50 AM |
| **Vote Type:** | Other: Extend Current Contracts |
| **Description:** | An Ordinance authorizing the execution of a contract with Coastal Securities, Inc. to provide Co-Financial Advisor Services in connection with various of the City's financings for a period to commence April 1, 2016 and terminate March 31, 2019, with an option to extend the contract for one additional two-year period under the same terms and conditions. |
| **Result:** | Failed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Ivy R. Taylor | Mayor | | | x | | | |
| Roberto C. Treviño | District 1 | | | x | | | |
| Alan Warrick | District 2 | | | x | | | |
| Rebecca Viagran | District 3 | | | x | | | |
| Rey Saldaña | District 4 | | x | | | x | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | | x | | | |
| Cris Medina | District 7 | | | x | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Joe Krier | District 9 | | x | | | | x |
| Michael Gallagher | District 10 | | | x | | | |

# A T T A C H M E N T  I

# CITY OF SAN ANTONIO
# Financial Advisor Services Contract

This Financial Advisor Services Contract (hereinafter referred to as "**CONTRACT**") is made and entered into by and between the City of San Antonio, Texas, (hereinafter referred to as "**CITY**") a Texas Municipal Corporation, acting by and through its City Manager, and **COASTAL SECURITIES, INC.** (hereinafter referred to as "**FIRM**"), a corporation chartered under the laws of the State of Texas, acting by and through its representative, Jorge Rodriguez, its Managing Director, and provides terms and conditions under which **FIRM** shall serve as Financial Advisor or Co-Financial Advisor to **CITY** in connection with financing capital improvements and other projects through the potential issuance of, among others, the following obligations, hereinafter collectively referred to as "Obligations".

- General Obligation Bonds
- Combination Tax and Revenue Certificates of Obligation
- Tax Notes
- Airport System Revenue Improvement Bonds
- Passenger Facility Charge and Subordinate Lien Airport System Revenue Bonds
- Customer Facility Charge Revenue Bonds
- Airport Special Facilities Revenue Bonds
- Airport Passenger Facility Charge Revenue Bonds
- Municipal Drainage Utility System Revenue Bonds
- Municipal Facilities Corporation Bonds
- Public Property Finance Contractual Obligations
- Public Facilities Corporation Bonds
- Convention Center Expansion Revenue Bonds
- San Antonio Housing Trust Finance Corporation Bonds
- Conduit Financings including, but not limited to, the following:
  - Economic Development
  - Health Care
  - Higher Education
  - Housing Authority
  - Municipal Facilities Corporation
  - Empowerment Zone Development Corporation
  - Local Development Corporation
  - Other
- Lease-Lease Back Financing
- Pension Obligation Bonds
- Tax Increment Financing
- Lease/Purchase Financing
- Public Improvement Districts
- Special Assessment Districts
- Clean Renewable Energy Bonds
- Other Types of Financings

- Interest Rate Exchange Transactions
- Variable Rate Demand Bonds
- Tax-Exempt Commercial Paper

**IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROVISIONS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION,** the receipt and sufficiency of which is hereby acknowledged, the parties hereto 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. GENERAL STATEMENT

1.1 **CITY**, from time to time, will revise the long-term debt management plan (the "Debt Plan") and consider the issuance of Obligations. The purpose of this **CONTRACT** is to establish parameters within which **FIRM** is to provide Financial Advisor Services related to reviewing the **CITY's** debt structure, evaluating financing options and revising the Debt Plan, as well as, provide Financial Advisor Services in connection with the authorization, issuance, sale and delivery of Obligations. "Financial Advisor Services", as used herein, shall refer to all those services outlined below in Article II.

1.2 In the performance of Financial Advisor Services, **FIRM** understands that it may be required to provide said services, as outlined below, along with another entity, and in that capacity act as **CITY's** Co-Financial Advisor. This, however, in no way limits **FIRM's** obligation to provide all the services listed herein.

1.3 **FIRM** acknowledges and understands that the consideration provided for herein at Article IV constitutes all of the remuneration it is to receive for services rendered. In the event **FIRM** is requested to provide services with another Financial Advisor Service provider, **FIRM** understands it will receive the percentage of the applicable fee as set out in the schedules shown in subsection 4.2.

## II. SCOPE OF SERVICES

2.1 **FIRM** agrees to provide all Financial Advisor Services normally performed by such advisors, including but not limited to those set out below, and to perform such other duties as may be necessary or advisable:

a. Review and analyze debt structures, revenue cash flows and trends, and current and proposed taxing requirements. The analysis will take into account any outstanding obligations which are payable from the net revenues thereof, additional net revenues from any proposed increases and/or additional net revenues as projected by consultant analysis, evaluation and pro forma cash flows. Based on such financial findings, the **FIRM** shall devise and recommend for the **CITY's** consideration and approval, a plan of financing under terms and conditions most advantageous to the **CITY**, consistent

with a minimum effective interest rate. These plans of finance will include but not be limited to the following:

1. Ad Valorem Debt Management Plan; and

2. Airport System Debt Management Plan.

b. Assist the **CITY** in the selection of financial underwriting firms including the preparation of the request for proposal to provide financial underwriting services, in-depth evaluation of proposals submitted by underwriting firms and oral presentations by such firms (if any); and selection of the financial underwriting pool and financial underwriting syndicates for specific transactions.

c. Assist the **CITY** in all aspects of both competitive and negotiated transactions including (as applicable), but not limited to the following:

1. Assist in the preparation of an Official Statement or Prospectus containing official data and other information of the nature and to the extent ordinarily required in bidding on obligations, all of which is to be furnished with a sufficient number of copies to permit mailing to prospective bidders, a list of which the **FIRM** and/or underwriters will provide.

2. Advise the **CITY** of current bond market conditions, forthcoming bond issues and other general information and economic data which might normally be expected to influence interest rates or bidding conditions, so that the date for the sale of any obligations in the open market can be set at a time which is viewed to be most favorable.

3. Assist the **CITY** with the sale and delivery of bonds and/or certificates, or other debt instruments.

4. Assist the **CITY** in securing competitive bids for credit enhancement, paying agent/registrar banks, trustee banks, escrow agents, financial printers, and other services rendered from other parties associated with financial transactions.

5. Arrange for the printing of the offering documents related to the sale of the bonds, certificates, or other debt instruments.

6. Consult with **CITY** Staff on the matter of bond ratings for the proposed issue and when so instructed, direct the preparation of such information as is required for submission to the bond rating agencies. In the event the City in its unfettered discretion considers it advisable to make a personal presentation of information to the bond rating agencies, the **FIRM** will accompany those representing the **CITY** before such bond rating agencies.

7. Assist the **CITY** in the compilation and preparation of information, as needed, for submission to the municipal bond insurance companies for consideration to qualify the proposed issue for municipal bond insurance.

8. Assist the **CITY** in planning and coordination of other miscellaneous activities in connection with the issuance of debt as necessary.

d. The **CITY** retains experienced municipal bond advisory law firms ("Bond Counsel") to prepare the proceedings and provide counsel with respect to all necessary actions, including, but not limited to the legal issuance and final delivery of the **CITY's** obligations, issuance of an opinion affirming the legality of the **CITY's** obligations, and the preparation of legal proceedings for a bond election if required. The **FIRM** shall collaborate with Bond Counsel and shall assist in all the financial advisory aspects involved in the preparation of appropriate legal proceedings and documents.

e. If a bond election is required, the **FIRM** will assemble and transmit to Bond Counsel such data as may be required in the preparation of the necessary petitions, orders, resolutions, notices and certificates; and will assist the **CITY** in the expeditious handling thereof.

f. The **FIRM** shall advise, inform, and assist the **CITY** in performance of due diligence investigations with respect to financial underwriting firms that the **CITY** may contemplate utilizing in a financing transaction. Such due diligence shall include matters pertaining to the knowledge of, or investigation into a firm's alleged, accused or convicted financial misconduct, securities violations, Justice Department investigation(s), or other financial distrust.

g. Advise and assist the **CITY** in complying with, and preparing continuing disclosure of financial information and operating data pursuant to, S.E.C. Rule 15c2-12.

h. Assist the **CITY** with other financial analyses as needed.

2.2 Specifically excluded from the financings and issuances for which **FIRM** shall provide services under this **CONTRACT** are those which are already in process under **CITY's** prior contract. The financing are as follows:

a. Ground Lease negotiations with Grand Hyatt Hotel; and
b. City of San Antonio Education Facilities Corporation Our Lady of the Lake University Financing, Series 2016

## III. TERM

3.1 This **CONTRACT** shall commence on April 25, 2016, and shall terminate on March 31, 2019, unless extension or earlier termination shall occur pursuant to any of the provisions of this **CONTRACT**.

3.2 **CITY** shall have the option to renew this **CONTRACT** for one (1) additional two (2) year period for the services described herein. This option shall be at the **CITY's** sole discretion and such renewal or extension, if exercised, shall be evidenced by passage of an ordinance by **CITY's** City Council.

## IV. CONSIDERATION

4.1 Subject to subsections 4.2 through 4.6, in consideration for the performance of services provided for in Articles I and II by **FIRM**, and as reimbursement for the expenses, as described herein, which may be incurred and associated therewith by **FIRM**, **CITY** agrees to pay **FIRM** and **FIRM** agrees to accept a cash fee in an amount equal to sixty percent (60%) of the applicable fee set forth in the schedules below, plus reimbursement for expenses incurred by **FIRM** on behalf of **CITY**, at **CITY's** instruction, and not provided for herein. Such fee shall become due and payable simultaneously with delivery of the securities to the purchaser.

4.2 **Tax-Supported Debt Fee Schedule – Per Bond Issuance**

| Amount | Gross Fee |
|---|---|
| Minimum Fee | $15,000 |
| $0 to $15,000,000 | $15,000 plus $1.10 per $1,000 |
| $15,000,001 to $30,000,000 | $16,500 plus $0.90 per $1,000 over $15,000,000 |
| $30,000,001 to $45,000,000 | $30,000 plus $0.70 per $1,000 over $30,000,000 |
| $45,000,001 and over | $45,500 plus $0.50 per $1,000 over $45,000,000 |

* *Fees payable to **FIRM** based on higher of par vs. bond proceeds*

**Revenue Bond Fee Schedule – Per Bond Issuance**

| Amount | Gross Fee |
|---|---|
| Minimum Fee | $22,500 |
| $0 to $25,000,000 | $22,500 plus $0.75 per $1,000 over $10,000,000 |
| $25,000,001 and over | $33,750 plus $0.60 per $1,000 over $25,000,000 |

* *Fees payable to **FIRM** based on higher of par vs. bond proceeds*

4.3 Combination new money and refunding general obligation bonds shall be considered as one issue and the fee shall be based on 125% of the fee schedule set forth above.

4.4 New-money tax-exempt or taxable certificates of obligation or tax notes sold at the same date as the new money and refunding general obligation bonds shall be considered as a separate issue.

4.5 The fee schedule for refundings, to include current refundings, advance refundings, forward refundings, and SWAP refundings shall be computed at the fee schedule set forth above and multiplied by 125%.

4.6 In the event **CITY** effectuates a structured financing or conduit offering, **CITY** shall negotiate with **FIRM** the remuneration due **FIRM** if any, for services **FIRM** specifically provides in connection with the structured financing or conduit offering. Conduit issuers shall include but not be limited to: San Antonio Housing Trust Finance Corporation, Economic Development Corporation, Higher Education Facilities Corporation, Municipal Facilities Corporation, Local Government Corporations, Public Facility Corporations, and such other conduit issuers or structured financings as may arise.

4.7 **CITY** shall not reimburse **FIRM** for expenses related to travel expenses from **FIRM's** place of business to **CITY**.

4.8 If a bond election is required and subsequently fails, or if after analysis of the possible issuance of Revenue Bonds or Special Tax Bonds, financing is found to not be feasible or practical, no fee shall be due or payable to **FIRM**, except for the reimbursement of certain expenses incurred by **FIRM** on behalf of **CITY**, at **CITY's** instruction, and not provided for herein.

4.9 **CITY** shall negotiate with **FIRM**, on a case-by-case basis the amount of computer fees and structuring fees to be paid, if any, based on the work performed on any financial transaction and the payment received from the issuance of Obligations. **FIRM** acknowledges and understands, however, that **CITY** shall not pay computer fees for work that is normally performed in the financial analysis of an issuance of Obligations.

4.10 In the event the **CITY** effectuates either an in-substance legal cash defeasance or an in-substance economic defeasance, the **CITY** shall negotiate with **FIRM** the remuneration due **FIRM**, if any, for services **FIRM** specifically provides related to the structuring of such a cash defeasance.

4.11 In the event **CITY** requests **FIRM** to provide additional services not specifically provided for in Articles I and II, **CITY** and **FIRM** shall negotiate a reasonable fee prior to the engagement or performance of any such additional work by **FIRM.** Such agreement is subject to City Council approval, as evidenced by passage of an ordinance. **CITY** reserves the right to utilize or engage another firm to provide such other services not provided for herein, including but not limited to specific financings that are new, unique, or have not yet been taken under consideration by the **CITY**.

## V. RECORDS

5.1 **FIRM** 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, and shall make such materials available to the **CITY** at their respective offices, at all reasonable times and as often as **CITY** may deem necessary during the **CONTRACT** period, including any extension or renewal hereof, and the retention period set forth below, for purposes of inspection, examination, and making excerpts and or copies of same by **CITY** and any of its authorized representatives.

5.2 **FIRM** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the **CONTRACT**. If at the end of four (4) years there is litigation involving or concerning this documentation or the services provided hereunder, **FIRM** shall retain the records until the resolution of such litigation. **CITY** may, at its election, require **FIRM** to return said documents to **CITY** at **FIRM's** expense prior to or at the conclusion of said retention period.

5.3 **FIRM** agrees to notify **CITY** immediately if a request is made by a third party for information produced and/or maintained by **FIRM** as a result of the provision of services under this **CONTRACT**. **FIRM** shall immediately forward said request to **CITY** for response.

## VI. INSURANCE

6.1 Prior to the commencement of any work under this Agreement, **FIRM** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the **CITY's** Finance Department, which shall be clearly labeled "*Financial Advisor Services Contract*" 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** Finance Department. No officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.

6.2 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.

6.3 A **FIRM's** financial integrity is of interest to the **CITY**; therefore, subject to **FIRM's** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **FIRM** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **FIRM'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<br>2. Employers' Liability | Statutory<br>$500,000/$500,000/$500,000 |
| 3. Broad form Commercial General Liability Insurance to include coverage for the following:<br>a. Premises/Operations<br>b. Independent Contractors<br>c. Products/Completed Operations<br>d. Personal Injury<br>e. Contractual Liability<br>f. Damage to property rented by you | For Bodily Injury and Property Damage of $1,000,000 per occurrence;<br>$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage<br><br>$100,000 |
| 4. Business Automobile Liability<br>a. Owned/leased Vehicles<br>b. Non-owned Vehicles<br>c. Hired Vehicles | Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence |
| 5. Professional Liability (Claims-made basis)<br>To be maintained and in effect for no less than two years subsequent to the completion of the professional service. | $1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. |

6.4 **FIRM** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **FIRM** herein, and provide a certificate of insurance and endorsement that names the **FIRM** and the **CITY** as additional insureds. **FIRM** 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.

6.5 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). **FIRM** 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. **FIRM** shall pay any costs incurred resulting from said changes.

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

6.6 **FIRM** 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 polices;

- Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** where the **CITY** is an additional insured shown on the policy;

- Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**; and

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

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

6.8 In addition to any other remedies the **CITY** may have upon **FIRM'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 **FIRM** to stop work hereunder, and/or withhold any payment(s) which become due to **FIRM** hereunder until **FIRM** demonstrates compliance with the requirements hereof.

6.9 Nothing herein contained shall be construed as limiting in any way the extent to which **FIRM** may be held responsible for payments of damages to persons or property resulting from **FIRM's** or its subcontractor's performance of the work covered under this Agreement.

6.10 It is agreed that **FIRM's** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the **CITY** for liability arising out of operations under this Agreement.

6.11 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.

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

## VII. INDEMNITY

7.1 **FIRM 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 or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to FIRM's activities under this CONTRACT, including any acts or omissions of FIRM, any agent, officer director, representative, employee, consultant or subcontractor of FIRM, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers, or employees. IN THE EVENT FIRM AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

7.2 **The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

7.3 **FIRM shall promptly advise the CITY in writing of any claim or demand against the CITY or FIRM known to FIRM related to or arising out of FIRM's activities under this CONTRACT.**

7.4 **CITY** shall have the right to select or to approve defense counsel to be retained by **FIRM** in fulfilling its obligation hereunder to defend and indemnify **CITY**, unless such right is expressly waived by **CITY** in writing. **FIRM** 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 **FIRM** fails to retain Counsel within such time period, **CITY** shall have the right to retain defense counsel on its own behalf, and **FIRM** 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.

7.5 In any and all claims against any party indemnified hereunder by any employee of **FIRM**, 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 **FIRM** or any subcontractor under worker's compensation or other employee benefit acts.

## VIII. OTHER WORK

8.1 **FIRM** understands and agrees that any work for or on behalf of **CITY** that may be in progress prior to the execution of this **CONTRACT** shall remain the responsibility of the Financial Advisor Firm or Firms that are working on the transaction, and that that prior responsibility is governed by the terms of that prior relationship. Fees will be paid to the Firms working on the transaction and prior contractual arrangements with such Firms shall be terminated pursuant to the terms of the prior relationship.

Financings or work on potential financings that are already in process and under contract, and are therefore governed by the terms of that prior relationship are as follows:

a. Ground Lease negotiations with Grand Hyatt Hotel; and
b. City of San Antonio Education Facilities Corporation Our Lady of the Lake University Financing, Series 2016

8.2 **FIRM** understands that this **CONTRACT** does not include the provision for, and hereby specifically prohibits **FIRM** from underwriting any **CITY** Obligations, whether sold by competitive or negotiated sale method, for transactions on which **FIRM** provides Financial Advisor Services.

## IX. CONFIDENTIALITY

9.1 **FIRM** acknowledges that during the term of this **CONTRACT** it may have access to

confidential information, and in accordance therewith, agrees to establish a method to secure and maintain the confidentiality of such information.

## X. OWNERSHIP OF DOCUMENTS

10.1 Any and all writings, documents or information in whatsoever form and character produced by **FIRM** pursuant to the provisions of this **CONTRACT**, is the exclusive property of **CITY**; and no such writing, document, or information shall be the subject of any copyright or proprietary claim by **FIRM**.

10.2 **FIRM** understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, **CITY** has the right to use all such writings, documents and information as **CITY** desires, without restriction.

## XI. TERMINATION

11.1 For purposes of this **CONTRACT**, "termination" of this **CONTRACT** shall mean termination by completion of the provision of services stated herein or earlier termination pursuant to any of the provisions hereof.

11.2 **CITY** may terminate this **CONTRACT** in accordance with this clause, in whole or in part, for any of the following:

a. Neglect or failure by **FIRM** to perform or observe any of the material terms, conditions, covenants or guarantees of this **CONTRACT** or of any amendment between **CITY** and **FIRM**; or

b. Violation by **FIRM** of any rule, regulation or law to which **FIRM** is bound or shall be bound while and in performing the services required under this **CONTRACT**.

11.3 Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **FIRM** specifying the effective date of termination and the extent to which performance of work under this **CONTRACT** will be terminated. And upon receipt of any such notice to terminate, all finished or unfinished documents, data, charts, schedules, or other appended documentation to, prepared by or on behalf of **FIRM** under this **CONTRACT**, save and except for preliminary scratch, and sketch documentation, shall at the option of **CITY**, be accessible to the **CITY** as provided in Article V.

11.4 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by **CITY**), **FIRM** shall submit to **CITY** its claim in detail for any moneys owed by **CITY** for services performed under this **CONTRACT**, including for all work performed to the date of notice required hereunder and for any necessary and proper work performed as determined solely by **CITY** in the ensuing thirty day period in order to close out the project, provided however, that such payment does not exceed the maximum amount set out in Article IV.

11.5 Notwithstanding the provisions contained in this Article, either party may terminate this **CONTRACT** by giving the other party thirty (30) days written notice in accordance with Article XXII.

## XII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

### A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

### B. Definitions

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

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

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each

registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

**Good Faith Efforts** – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE

or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

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

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

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

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

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and

also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than $1/16^{th}$ percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

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

limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has

represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

E. Commercial Nondiscrimination Policy Compliance

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

F. Prompt Payment

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

G. Violations, Sanctions and Penalties

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

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

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

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).

## XIII. SUBCONTRACTING

13.1 Any other clause of this **CONTRACT** to the contrary notwithstanding, none of the work or services covered by this **CONTRACT**, shall be subcontracted without the prior written approval of **CITY**, and, unless specific waiver is granted in writing by **CITY**, such subcontracted work shall be subject by its terms to all provisions of this **CONTRACT**. Compliance by all approved subcontractors with this **CONTRACT** shall be the responsibility of **FIRM**.

## XIV. NON-ASSIGNABILITY

14.1 **FIRM** shall not assign any interest in this **CONTRACT** to any other party without the prior written consent of **CITY**, and any attempted assignment shall be void. **CITY** expressly reserves the right to disapprove or withhold consent of any assignment. In no event shall such consent, if obtained, relieve **FIRM** from any obligations under this **CONTRACT**.

## XV. CONFLICT OF INTEREST

15.1 **FIRM** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its individual officers, employees, and agents are neither officers nor employees of **CITY** or any **CITY** agencies, including but not limited to **CITY**-owned utilities.

15.2 **FIRM** further warrants and certifies that it, its individual officers, employees, and agents do not have a prohibited financial interest as proscribed by the Ethics Code of the **CITY**. An officer or employee has a **"prohibited financial interest"** in a contract with **CITY** or in the sale to the **CITY** of land, materials, supplies, or service, if any of the following individuals or entities is a party to the **CONTRACT**: **CITY** officer or employee; his or her parent, child, or spouse; a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly, owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity of which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner, or a parent or subsidiary business entity.

## XVI. COMPLIANCE

16.1 **FIRM** shall comply with all federal, state and local laws, rules and regulations, including but not limited to, all securities rules and regulations applicable to the services required herein.

## XVII. INDEPENDENT CONTRACTOR

17.1 It is expressly understood and agreed that the **FIRM** provides services as an independent contractor responsible for its respective acts or omissions and that **CITY** shall in no way be responsible therefore. Except as provided herein, neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

## XVIII. CHANGES AND AMENDMENTS

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

18.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this **CONTRACT** and that any such changes shall be automatically incorporated into this **CONTRACT** without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

## XIX. LICENSES/CERTIFICATIONS

19.1 **FIRM** warrants and certifies that **FIRM**, each of its employees, 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.

19.2 **FIRM** acknowledges and understands that **CITY** is relying on the warranty and certification set forth in Section 19.1 above in entering into this **CONTRACT** with **FIRM**.

## XX. RESERVED

## XXI. ENTIRE AGREEMENT

21.1 This **CONTRACT** together with its authorizing ordinance constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this **CONTRACT** shall be deemed to exist or to bind the parties hereto unless same be in

writing, dated subsequent to the date hereof, and executed by both parties in accordance with Article XVII.

## XXII. SEVERABILITY

22.1 If any clause or provision of this **CONTRACT** is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the **CITY**, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this **CONTRACT** shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this **CONTRACT** that is invalid, illegal, or unenforceable, there be added as a part of the **CONTRACT** a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## XXIII. NOTICES

23.1 For purposes of this **CONTRACT**, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, certified mail, postage prepaid, to the addresses set forth below:

| **CITY** | **FIRM** |
|---|---|
| City of San Antonio<br>Chief Financial Officer<br>Attention: Ben Gorzell, Jr.<br>111 Soledad Street, 5 Floor<br>San Antonio, Texas 78205 | Coastal Securities, Inc.<br>Managing Director<br>Attention: Mr. Jorge Rodriguez<br>2526 North Loop 1604 West, Suite 150<br>San Antonio, Texas 78248 |

## XXIV. LAW APPLICABLE

24.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

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

## XXV. LEGAL AUTHORITY

25.1 The signer of this **CONTRACT** for **FIRM** represents, warrants, assures and guarantees that she or he has full legal authority to execute this **CONTRACT** on behalf of **FIRM** and to bind **FIRM** to all of the terms, conditions, provisions and obligations herein contained.

## XXVI. PARTIES BOUND

26.1 This **CONTRACT** shall be binding on and inure to the benefit of the parties hereto and their respective, legal representatives and successors, except as otherwise expressly provided for herein.

## XXVII. CAPTIONS

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

**EXECUTED** and **AGREED** to as of the dates set forth below.

| **CITY** | **FIRM** |
|---|---|
| **CITY SAN ANTONIO, TEXAS** | **COASTAL SECURITIES, INC.** |
| By: _____ | By: _____ |
| Name: Ben Gorzell, Jr. | Name: Jorge Rodriguez |
| Title: Chief Financial Officer | Title: Managing Director |
| Date: April ___, 2016 | Date: April ___, 2016 |

**APPROVED AS TO FORM:**

_____
Robert K. Nordhaus
Assistant City Attorney

# Financial Advisor Services
# City Council
# Agenda Item #24

Ben Gorzell, Jr.
Chief Financial Officer

April 14 2016

# Financial Advisor Services

## Debt Planning

- Analyze Debt Structures
- Present Innovative Financing Options
- Review Cash Flows and Trends
- Quantitative Analysis

## Bond Transactions

- Coordinate Issuance, Sale and Delivery
- Prepare Offering Documents
- Credit Ratings
- Market Analysis
- Pricing Oversight

## Other

- Assist in Financial Underwriter Selection
- Analyze Conduit Debt
- Monitor Legislative and Regulatory Changes
- Provide Financial Analysis as Needed

# Background

- Utilization of Co-Financial Advisors
- Existing Contract:
  - Coastal Securities (60%) & Estrada Hinojosa (40%)
  - Three year term with one additional two-year term
  - Renewal was exercised & contract extended to December 31, 2015
  - Extended to March 31, 2016
- Proposed Contract:
  - Three years term with option to renew for one additional two-year term

# Solicitation Timeline

| October 19, 2015 | October 20, 2015 | November 17, 2015 | March 10, 2016 | April 14, 2016 |
|---|---|---|---|---|
| RFP Issued | High Profile Annual Forecast | Submittal Deadline | Briefing High Profile Sub-Committee | City Council Consideration |

# Process Overview

## 8 Proposals Received

- Coastal Securities, Inc.
- Estrada Hinojosa & Company, Inc
- FirstSouthwest Company, LLC
- M.E. Allison & Co., Inc.
- Public Financial Management, Inc.
- RBC Capital Markets, LLC
- TKG & Associates LLC
- YaCari Consultants, LLC

**Interviewed all 8 firms**

## Evaluation Committee

- Ben Gorzell, Jr., Chief Financial Officer
- Maria Villagomez, Assistant City Manager
- Mike Sawaya, Director, Convention & Sports Facilities
- Troy Elliott, Director, Finance
- Margaret U. Villegas, Assistant Director, Finance
- Cappi Arriola, Financial Management Administrator, Finance
- Alejandro Tijerina, Financial Manager, Finance

# Evaluation Criteria

| | |
|---|---|
| Experience, Background Qualifications | • 30 points<br>• Evaluation Committee |
| Proposed Plan | • 45 points<br>• Evaluation Committee |
| Pricing | • 5 points<br>• Formula driven |
| Council Adopted Policies | • 5 points – Mentorship Program<br>• 10 points – Local Preference Program<br>• 5 points – Veteran Owned Small Business Program |

# Council Adopted Policies

## SBEDA
Small Business Economic Development Advocacy Program

- San Antonio Metropolitan Statistical Area (SAMSA)
- Small Minority Women-Owned Business Enterprises (SMWBE)

## LPP
Local Preference Program

- City Limits
- Headquartered
- Branch Office
  - 100 employees or more
  - 20% of workforce

## VOSB
Veteran Owned Small Business Program

- Veteran designation by Small Business Administration (SBA) or similar certifying agency

# Score Matrix

| RFP Financial Advisor Services<br><br>Score Summary | Maximum Points | Coastal Securities, Inc. | FirstSouthwest Company, LLC | M.E. Allison & Co., Inc. | Estrada Hinojosa & Company, Inc. |
|---|---|---|---|---|---|
| A - Experience, Background, Qualifications | 30 | 28.57 | 27.00 | 20.57 | 24.00 |
| B - Proposed Plan | 45 | 42.86 | 37.29 | 27.43 | 32.71 |
| C - Fee Schedule | 5 | 5.00 | 4.68 | 4.14 | 4.58 |
| D - SBEDA - Mentorship Incentive | 5 | 5.00 | 0.00 | 5.00 | 0.00 |
| E - Local Preference Program | 10 | 0.00 | 0.00 | 10.00 | 0.00 |
| F - VOSB Preference Program | 5 | 0.00 | 0.00 | 0.00 | 0.00 |
| TOTAL SCORE | 100 | 81.43 | 68.97 | 67.14 | 61.29 |
| RANK BASED ON TOTAL SCORE | | 1.00 | 2.00 | 3.00 | 4.00 |

# Score Matrix (cont'd)

| RFP Financial Advisor Services<br><br>Score Summary | Maximum Points | Public Financial Management, Inc. | RBC Capital Markets, LLC | TKG & Associates LLC | YaCari Consultants, LLC |
|---|---|---|---|---|---|
| A - Experience, Background, Qualifications | 30 | 25.71 | 23.43 | 18.71 | 13.71 |
| B - Proposed Plan | 45 | 31.57 | 30.14 | 24.29 | 21.71 |
| C - Fee Schedule | 5 | 3.92 | 3.68 | 2.59 | 3.68 |
| D - SBEDA - Mentorship Incentive | 5 | 0.00 | 0.00 | 0.00 | 0.00 |
| E - Local Preference Program | 10 | 0.00 | 0.00 | 0.00 | 0.00 |
| F - VOSB Preference Program | 5 | 0.00 | 0.00 | 0.00 | 0.00 |
| TOTAL SCORE | 100 | 61.20 | 57.25 | 45.59 | 39.10 |
| RANK BASED ON TOTAL SCORE | | 5.00 | 6.00 | 7.00 | 8.00 |

# Recommendation

| | | |
|---|---|---|
| Coastal Securities, Inc. | Lead Banker<br>Jorge Rodriguez | Contract Participation 60% |
| FirstSouthwest Company, LLC | Lead Bankers<br>Anne Burger Entrekin<br>Tina Arias Peterman<br>Richard Ramirez | Contract Participation 40% |

# Financial Advisor Services
# City Council
# Agenda Item #24

Ben Gorzell, Jr.
Chief Financial Officer

April 14 2016