SW/vv
08/18/16
Item #20

AN ORDINANCE 2016-08-18-0618

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH UNIQUE MANAGEMENT SERVICES FOR LIBRARY BOOK AND MATERIAL RECOVERY, REVENUE COLLECTION AND PATRON INFORMATION NOTIFICATION SERVICES.

* * * * *

WHEREAS, the San Antonio Public Library (the Library) issued a Request for Proposal with a submission deadline of March 22, 2016 to continue to outsource for Collections and Patron Communication services; and

WHEREAS, Unique Management Services was the only respondent and after evaluation committee review and discussion, Unique Management Services was recommended for award by consensus of the evaluation committee; and

WHEREAS, there were no proposals submitted from local businesses or veteran owned small business; therefore, the Local Preference Program and Veteran-Owned Small Business Preference Program were not applied; and

WHEREAS, under this contract the Library will refer delinquent accounts exceeding $25.00 owed and 60 days or more of inactivity; and

WHEREAS, Unique Management Services will pursue these accounts via a series of telephone calls and written letters; and

WHEREAS, the contractor will utilize a script approved by the Library; and

WHEREAS, in all cases, account holders will be referred back to the Library for payment, or to turn in books and materials; therefore, the contractor will not be handling any cash receipts or materials; and

WHEREAS, additionally the contract stipulates that no accounts will be referred to credit agencies during or after the processing by Unique Management Services; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the San Antonio Public Library or his designee, is authorized to execute a professional services agreement with Unique Management Services for library book and material recovery, revenue collection and patron information notification services. A copy of the agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I.**

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SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 204000000526 and General Ledgers associated to library fines which include 4407400, 4407410 and 4407411.

SECTION 3. Payment amounts will be encumbered upon issuance of a purchase order, and made payable to Unique Management Services for professional services. Unique Management Services will be paid 22.5% of total recovery for every library account referred for their action. Funds will be paid out of Fund 11001000, Cost Center 0401010004 and General Ledger 5202020.

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 the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 18th day of August, 2016.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

for Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**20 (in consent vote: 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22)**
Date:	08/18/2016
Time:	09:17:28 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a professional services agreement with Unique Management Services for library book and material recovery, revenue collection and patron information notification services. [Maria Villagomez, Assistant City Manager; Ramiro Salazar, Library Director]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		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				

Attachment I

PROFESSIONAL SERVICES AGREEMENT
FOR
LIBRARY COLLECTION AND NOTICE PRINTING

STATE OF TEXAS	§
	§
COUNTY OF BEXAR	§

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____ 2016 and UNIQUE MANAGEMENT SERVICES, INC. by and through its _____ (hereinafter referred to as "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:

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

"Collection Activity" shall mean Contractors actions in contacting patrons in reference to accounts which have been referred to Contractor by City.

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

"Customer" shall mean the Director or acting director of City's Public Library who checks out any library material.

"Director" shall mean the Director or acting director of City's Library Department or any person he or she designates.

"Library" shall mean the San Antonio Public Library, any of its branches.

"Materials: shall mean any item in any format checked out from the Library's collection.

"Waives" shall mean accounts sent for collection, but for which City subsequently determines not to collect a fee.

II. TERM

2.1 Unless sooner or terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2016 and terminate three years after commencing. The parties, by mutual agreement, may extend this Agreement for up to two additional 1 year terms.

2.2 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 subsequent contract period is subject to and contingent upon such 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 collection and recovery services in accordance with criteria established by the Library and consistent with the Library's priority to maintain customer good will and privacy and its preference to recover materials borrowed and not returned.

3.3 Contractor shall assign a project manager who will coordinate the Library's services as outlined in the project objective. The project manager shall be available to respond to staff questions within 24 hours, 7 days a week throughout the term of the project.

3.4 Contractor shall accept data from the Library's Integrated Library System and shall work with the data in the form in which it is transmitted. Contractor shall work closely with the Library's technical staff to develop a process for the electronic transfer of files, submit and implementation schedule to put the new process in place within two (2) months of contract approval, train Library staff that work with the files and provide support services as and when needed.

3.5 Contractor shall meet the Library's requirements related to confidentiality and security of library date, materials recovery and patron satisfaction.

3.6 Contractor shall adhere to the timeline for Patron Notifications as outlined in this paragraph. Contractor shall interact with the Library's Integrated Library System to prepare overdue, hold, bill and statement of charges notices for printing or any other notices deemed necessary by the Library. Contractor shall print, process and mail library notices on a seven (7) day basis and shall track and report the volume of notices by type to the Library on an as requested basis.

These notice types will be produced and mailed using 8.5 x 11 inch library letterhead paper to be provided by the Contractor. The notice format will be transmitted by the Library via email or File Transfer Protocol (FTP). Contractor shall only send notices to those patrons who do not receive notifications by telephone or e-mail (as specified below). The cost for sending each notice is $0.64 for each mailer (the only modification to notice printing would be based on any future National postage increases). The types of notices are:

a. OVERDUE NOTICES (only to patrons without a phone number or e-mail address on the patron account.
This notice is transmitted/mailed 7 days after item due date.

b. HOLD NOTICES (only to patrons without a phone number or e-mail address on the patron account)
This notice is transmitted/mailed upon Ready For Pickup designation in patron account.

c. BILL NOTICES (only to patrons without an e-mail address on the patron account)
This notice is transmitted/mailed 21 days after the item due date.

d. STATEMENT OF CHARGES (only to patrons without an e-mail address on the patron account)
This notice is transmitted/mailed 21 days after the account reaches the $25.00 threshold.

3.7 Contractor shall provide monthly, quarterly and annual reports showing collection rates and other pertinent measures of collection success. Contractor shall provide reports with each revenue remittance that provides information sufficient to audit collections revenues. Contractor shall also provide ad hoc reports in a manner and form satisfactory to the City.

3.8 Contractor shall only use written communications (i.e. the text of notices) and telephonic communications (i.e. the script of the conversation) that have been submitted to and approved in advance by the Library.

3.9 Contractor shall work closely with Library staff to develop a system to handle manual transactions not part of the Library's Integrated Library System, provide appropriate training to Library staff and provide support services as and when needed.

3.10 Contractor shall provide Library with Acknowledgement Reports for all electronically submitted accounts in a manner and form satisfactory to the City.

3.11 Contractor shall generate and distribute through the U.S. Postal Service addressed to the library patron's name Overdue, Hold, Bill and Statement of Changes Notices or any other notices as deemed necessary by the Library, the format of which

has been duly approved in advance by the Library, detailing separately the amount due for materials, fine/fees incurred and the total amount due from the Customer.

3.12 Contractor shall develop a system whereby all collection efforts are suspended for Customers who entered into a payment plan to clear the amount owed. The Contractor will resume collection effort if notified by the Library that the terms of the payment plan are not met with no additional fee.

3.13 Upon notification by the Library that a payment has been returned for insufficient funds, Contractor will resume collection effort on the account with no additional fee. The Library will reinstate the amount due on the account.

3.14 Contract shall conduct all collection efforts in a professional and respectful manner keeping in mind the Library's need to retain the goodwill of its Customers.

3.15 Contractor shall retain accurate records of all collections, whether in cash or by checks, money orders, and credit cards from Customers who have mistakenly sent such remittances to Contractor and not to the Library as directed. Further, Contractor shall transmit such payments in full to the Library in one (1) business day.

3.16 Contractor shall identify all payments by Customer's Library account number when submitting reports or when transmitting Customer payments to the Library.

3.17 Contractor shall maintain written records concerning the verification and tracking of all payments received by the Library and provide a detailed monthly management report in a manner and form satisfactory to the City. These written records and reports shall contain at the minimum the value of material returned, money received, charges waived and balance due from each Customer.

3.18 Contractor shall provide a weekly report of collection activities undertaken by contractor broken down by affected amounts.

3.19 Contractor shall also provide a summary of the total value of materials recovered, money received in payment, charges waived, balance due and cost incurred for such collection/recovery services for that month.

3.20 Contractor shall provide skip-tracing services to locate Customers whose addresses are no longer valid. Contractor shall provide Library with a monthly update of skip-traced addresses listed by Customer account number.

3.21 Contractor shall not report unpaid accounts to national credit reporting agencies.

3.22 Contractor shall maintain the confidentiality, security and safety of all Library files and documents to ensure Customer satisfaction and shall give the Library a

monthly update of all new address information obtained through action initiated by the Customer.

3.23 Contractor shall assist the City in collecting fees or recovering materials from borrowers under the age of eighteen (18) by addressing direct mail to the borrower and by directing telephone calls to parents of such borrowers. Contractor shall identify minor borrowers by patron type and/or by birth dates contained in the records.

3.24 Contractor shall provide the Library password protected, (twenty-four) 24-hour, live and interactive account access to patron information found in the contractor's database. Access shall be through a secured connection and allow the Library to look at all accounts submitted to the Contractor, active or inactive, and their current status. Access shall allow the Library to see collection activities that have occurred on the accounts. Access shall allow Library staff to suspend accounts, generate paid-in-full letters on Contractor's letterhead and create reports directly from the Contractor's secured database twenty-four (24) hours a day, seven (7) days a week.

3.25 Contractor shall provide necessary training to Library staff and meet periodically with Library staff to discuss services and coordinate collection/recovery efforts.

3.26 As deemed necessary, Contractor and Library shall jointly establish written procedures for handling services required to be provided by Contractor as detailed herein.

3.27 Contractor's communication with Customer's will direct Customers to contact the Library regarding questions about their account. Should the Contractor receive a request for release of San Antonio Public Library circulation data under the Texas Public Information Act, Tex. Gov't Code Ann Section 552 (Vernon 1994 and Supp. 2003), the request will be referred to the Director's office at the San Antonio Public Library.

3.28 Contractor shall conduct all work performed under the contract according to applicable provisions of the Federal Fair Debt Collection Practices Act15 U.S.C. Section 1692, et seq. and Texas Debt Collections Practices Act (Tex. Fin. Code Ann. Section 392 et seq. (Vernon 1998 and Supp. 2003).

3.29 Contractor's proposal in response to City's Request for Proposal ("RFP") for Collections and Notice Printing issued February 11, 2016 is incorporated into this Agreement by reference as if fully set forth in length.

IV. COMPENSATION TO CONTRACTOR

4.1 City agrees to pay Contractor a straight commission of 22.5% of the total recovery from accounts referred to Contractor. All such sums shall be paid to Contractor on a quarterly billing schedule. Contractor and the City will monitor the pricing plan and

contract usage on an ongoing basis. During the term of the contract the City will be allowed to switch pricing to the most cost effective plan available.

4.2 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.

4.3 Contractor guarantees not to charge, in collection fees, more than the sum of the amount of money recovered by City plus any amounts waived by City. At the end of the term of the contract, the City will make a claim from any deficiency.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of City; and not such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

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 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.

6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") form the date of termination of the 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. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, required Contractor to return said documents to City prior to or at the conclusion of said retention.

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

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 the City upon 30 calendar day's written notice, which notices shall be provided in accordance with Article VIII, Notice.

7.3 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement it shall be considered an event of default. City shall have the option to deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII, Notice, to cure such fault. If Contractor fails to cure the default within such fifteen-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 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.

7.5 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to the City, all completed or partially completed documents, paper, 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 such compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement

through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Contractor of any and all right or claims to collection moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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 not event shall City's action of termination 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.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipts if sending the same by certified mail, return receipt requested, or upon receipts 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: Ramiro Salazar Library Director 600 Soledad San Antonio, TX 78205
If intended for Contractor, to:	Unique Management Services Attn: Nicole Atkins 119 E. Maple St Jeffersonville, IN 47130

IX. [Reserved]

X. INSURANCE

A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Library Department, which shall be clearly labeled "Collections and Notice Printing Project" in the Description of Operations block of the Certificate. The original 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 Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title 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 Library Department. No officer or employee, other than the City's Risk Manager, shall authority to waive this requirement.

B) 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 whereupon City may incur increased risk.

C) 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, an any extension hereof, at Contactor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000.00 per occurrence

D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, 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. All notices under this Article shall be given to City at the following address:

City of San Antonio
Attn: Library Department
600 Soledad
San Antonio, TX 78205

E) 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 an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the expectation 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 and employers' liability policies will provide a waiver of subrogation in favor of the City.

- Provide thirty (30) calendar days 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.

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

G) In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due, to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

H) 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 work covered under this Agreement.

I) 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.

J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in the Agreement.

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

XI. INDEMNIFICATION

RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representative of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, cause 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 RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, Contractor or subcontractor of RESPONDENT, 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 RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPAATIVELY IN ACCORDANE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAWS AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS.

The provisions of INDEMNITY are solely for the benefit of the parties hereto and not intended to create or granny any rights, contractual or otherwise, to any other person or entity. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT'S cost. The CITY shall have the right, at its option and at its expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

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 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: _____. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provisions of any services by said subcontractor.

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

12.4 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.

12.5 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

13.1 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 Contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and Contractors, 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. SBEDA

Contractor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

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

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

In all events, Contractor shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 2006-11-30-1335, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

XV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party of the contract or sale: a City officer or employee; his part, child or spouse; a business entity in which the officer or employee, or his part, child or spouse owns 10 (ten) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

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.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

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.

XX. NONWAIVER OF PERFORMANCE

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.

XXI. LAW APPLICABLE

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.

XXII. AMENDMENTS

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. ENTIRE AGREEMENT

25.1 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 XV, Amendments.

EXECUTED and **AGREED** to this _____ day of _____, 2016.

CITY OF SAN ANTONIO

_____
(Signature)

Printed Name: Ramiro S. Salazar

Title: Library Director

Date: _____

CONTRACTOR

Nicole Atkins
(Signature)

Printed Name: Nicole Atkins

Title: President/CEO

Date: 5/26/16

Approved as to Form:

_____
City Attorney