

AN ORDINANCE 2011 - 06 - 23 - 0536

AUTHORIZING THE INFORMATION TECHNOLOGY SERVICES DEPARTMENT (ITSD) TO ENTER INTO AN AGREEMENT WITH DIGITAL DEFENSE INCORPORATED (DDI) FOR CYBER SECURITY SERVICES TO INCLUDE ON-DEMAND EXTERNAL AND INTERNAL VULNERABILITY SERVICES.

* * * * *

WHEREAS, Digital Defense Incorporated (DDI) has offered to provide the City with cyber security services to include on-demand external and internal vulnerability services for the San Antonio Public Library; and

WHEREAS, these services are being donated to the City free of charge as a one-time service and the agreement will terminate upon completion of the services in the agreement; and

WHEREAS, the agreement with DDI provides for a portfolio of service to include monitoring, threat assessment reporting and online support, which will allow ITSD to enhance the security of the Library's information technology resources; **NOW THEREFORE**,

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

SECTION 1. The agreement with Digital Defense Incorporated to provide the City of San Antonio with on-demand external and internal vulnerability services for the San Antonio Public Library is hereby approved. The ITSD Director or his designee is authorized to execute the agreement, a copy of which is attached hereto and is incorporated by reference as **Attachment I**.

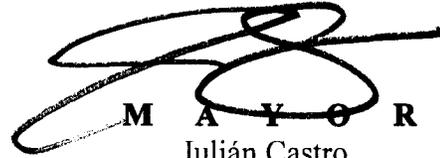
SECTION 2. The donation of property and/or services to the City of San Antonio must comply with GASB 33 and AD 8.8. All necessary information must be coordinated through the city's Finance Department to assure the recording of the proper accounting transactions.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

JK
06/23/11
#7

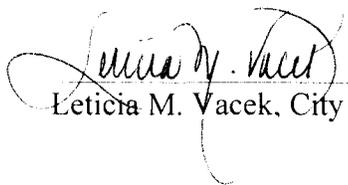
SECTION 4. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 23rd day of June, 2011.



M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



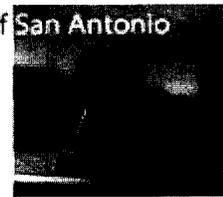
37

Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 7

Name:	6A, 6B, 6C, 7, 8, 9, 10, 11, 12, 13, 14A, 14B, 15, 18, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 27, 28, 29, 30A, 30B, 31, 32, 33A, 35, 36, 37, 38A, 38B, 38C, 38D, 38E, 38F, 38G, 38H, 38I, 38J, 38K, 38L, 38M, 38N, 38O, 38P, 38Q, 38R, 38S, 38T, 40, 41, 43, 44, 45, 46, 47, 49A, 49B, 49C, 49D, 50, 51, 52, 53A, 53B, 54, 55, 56A, 56B, 57						
Date:	06/23/2011						
Time:	09:57:52 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the Information Technology Services Department (ITSD) to enter into an agreement with Digital Defense Incorporated (DDI) for cyber security services to include on-demand external and internal vulnerability services. [Ben Gorzell, Chief Financial Officer; Hugh Miller, Director, Information Technology Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				x
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				



SECURITY ASSESSMENT SERVICES MASTER AGREEMENT

This Security Assessment Services Master Agreement ("Agreement") dated this ____ day of _____, 20____ ("Effective Date"), covers all services acquired by the client identified below ("Client" or "City") from Digital Defense, Inc., a Delaware corporation ("Provider" or "Vendor").

(1) **Structure of Agreement.** This Agreement, the executed Order Form(s) attached hereto as Exhibit(s) B, and other exhibits attached hereto as noted herein (collectively the "Agreement") constitute the complete agreement regarding those services and replace any prior oral or written communications between the Parties. Additional terms are contained in the applicable Order Form(s). If there is a conflict between the terms of this Agreement and the terms of the attached exhibits, the terms of this Agreement prevail.

(2) **Security Assessment Services.** Provider will perform the services noted in the Order Form(s) and described in detail in Exhibit A hereof ("Services") during the period and upon the terms and conditions specified in the Order Form. Either Party may request changes or additions to the Services. Any mutually agreed changes must be described in detail in writing and signed by both Parties.

(3) **Billing and Payment Terms.** Client agrees to pay the price specified in the Order Form(s) for the corresponding Services, plus any pre-approved travel or other expenses noted in the Order Form(s). Client will pay any and all sales or use taxes applicable to the Services provided under this Agreement. Any undisputed amount not paid fifteen (15) days after the date due will bear interest at the lower of 18% per annum or the maximum legal rate. Provider may suspend Services if non-payment continues beyond thirty (30) days.

a. **Recurring Services.** Unless otherwise specified in the Order Form(s), Client will make the initial payment for Services upon execution of this Agreement. Subsequent payments will be due on the first day of each calendar month for the balance of the term of this Agreement, including any extensions hereof.

b. **One-Time Services.** Client will pay for the Services as specified in the Order Form(s), typically full payment upon execution of the Agreement or, for larger projects, 50% on execution and 50% upon completion of the Services or after 60 days, whichever comes first.

(4) **Term and Termination.** This Agreement will become effective on the Effective Date and continue in effect until terminated as specified in the Order Form or this Section 4 (the "Term"). Either Party will have the right to terminate this Agreement by written notice to the other Party under any of the following circumstances: (a) a material breach by the other Party, unless such breach is cured within thirty (30) days of receipt of written notice regarding such breach; or (b) the other Party voluntarily or involuntarily becomes or threatens to become insolvent, the subject of a petition in bankruptcy, the appointment of a receiver, rehabilitator, conservator in bankruptcy, or other agent known by whatever name, to take possession of its assets or control of its operations or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors or similar matters, or admits in writing its inability to pay its debts as they become due. The obligations of the Parties under this Agreement that continue beyond expiration, termination or cancellation of this Agreement including, without limitation, Sections 5 through 12, will survive any such expiration, termination or cancellation. If at any point during the Term, any Party's performance under this Agreement conflicts or threatens to conflict with any material legal requirement, any Party may suspend performance under this Agreement and negotiate in good faith to amend this Agreement so that each Party's performance hereunder complies with the legal requirement. If after thirty (30) days, the Parties are unable to agree on a mutually acceptable amendment, any Party may immediately terminate this Agreement upon written notice to the other Party. Client will

promptly return any Reconnaissance Network Appliance(s) at Provider's expense upon termination of this Agreement.

a. **One-Time Service.** This Agreement will terminate once Provider has completed the Services described in the order form attached hereto as Exhibit B. Client has no obligation to pay any amounts over the one-time credit specified in Exhibit B. Provider agrees that should Client wish to continue using these types of services, Client will be obligated to procure these services in compliance with State Law, including but not limited to Chapter 252 of the Texas Local Government Code. Accepting these services by Client in no way obligates Client to continue using these services and will not give Provider any advantage should Client request proposals from qualified vendors for similar type services.

(5) **Intellectual Property Rights.** Each Party agrees that it will acquire no right, title or interest in or to the other Party's information, data, tools, processes or methods, or any copyrights, trademarks, service marks, trade secrets, patents or any other intellectual or intangible property or property rights of the other by virtue of the Services provided or materials delivered pursuant to this Agreement. Neither Party will use the other Party's trademarks, service marks, trade names nor product names other than as explicitly set forth in this Agreement. During the Term of this Agreement, Provider may include Client's name in a list of Clients on its website or in promotional materials or as a reference in sales presentations. If Client is granted the right to use any Provider certification, seal or logo under the terms of the Order Form, it may do so only during the period specified in the Order Form and subject to the then-current guidelines for use of such certification, seal or logo.

(6) **Representations and Warranties.**

a. **Mutual.** Each Party represents and warrants to the other that it has the right to enter into this Agreement, and that the consent of no other person or entity is necessary for it to enter into and fully perform this Agreement.

b. **Limited Warranties of Provider.** Provider represents and warrants to Client that:

i. All intrusions effected by Provider as part of the Services will be in accord with Provider's written proposal (Exhibit A), and will be performed on devices to be specified in writing by Client.

ii. All deliverables contemplated by this Agreement will meet the requirements described in this Agreement in all material respects.

iii. The Services will be performed in a workmanlike manner using reasonable care and skill by qualified personnel who are experienced in Provider's methodology.

iv. The Services will be performed at a level of quality consistent with that provided by the mainstream of experts providing similar services on a commercial basis in the United States.

v. The Services will not cause to have introduced into Client's information systems and networks any self-replicating or non-self-replicating computer codes, commands, routines or like data or entries that perform an undesired activity ("Virus").



Initials

c. **No Other Warranties.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SERVICES AND DELIVERABLES PROVIDED BY PROVIDER ARE PROVIDED "AS IS" AND PROVIDER (1) DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND (2) DOES NOT GUARANTEE THAT CLIENT'S NETWORK, COMPUTER SYSTEMS, OR ANY PORTIONS THEREOF ARE SECURE. CLIENT ACKNOWLEDGES THAT IMPENETRABLE SECURITY CANNOT BE ATTAINED IN REAL-WORLD ENVIRONMENTS AND THAT PROVIDER DOES NOT GUARANTEE PROTECTION AGAINST BREACHES OF SECURITY.

d. **No Guarantee of Meeting Client's Needs.** Provider has no way of determining Client's perceived needs, and therefore does not warrant that the Services will meet Client's needs.

e. **No Warranties to Third Parties.** Neither Provider nor Client will make any warranties on behalf of the other to any third party, without the prior written consent of the other Party.

(7) **Indemnification/Insurance.**

a. **General Indemnity.** VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this contract, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, 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 instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

b. **Intellectual Property Indemnity.** The Vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement, trademark, copyrights or any other intellectual property claims on goods and/or services.

c. **Insurance.**

1. Prior to the commencement of any work under this Agreement, Vendor shall furnish copies of all required endorsements and an original completed Certificate(s) of

Insurance to the City's Information Technology Services Department, which shall be clearly labeled "Security Assessment Service" 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 Purchasing & Contract Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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 whereupon City may incur increased risk.

3. A Vendor's financial integrity is of interest to the City; therefore, subject to Vendor's right to maintain reasonable deductibles in such amounts as are approved by the City, Vendor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Vendor'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
1. Workers' Compensation	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Employers' Liability	
3. 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 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

Initials

b. Non-owned vehicles	
c. Hired Vehicles	

4. 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). Vendor 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. Vendor 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: ITSD
P.O. Box 839966
San Antonio, Texas 78283-3966

5. Vendor 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 exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation 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.

6. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Vendor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Vendor'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.

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

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

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

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

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

(8) **Limitation of Liability.**

a. **Scope of Indemnification Obligations.**

i. **Unlimited.** The obligation of either Party to indemnify the other Party and its Related Parties from and against Losses pursuant to the provisions of Section 7.a of this Agreement will be without limitation as to amount, unless limits are specified under State Law.

b. **Generally.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, NEITHER PARTY: (1) WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS ATTRIBUTABLE TO ANY ACT, OMISSION OR MISREPRESENTATION BY SAID OTHER PARTY, ITS DIRECTORS, EMPLOYEES OR AGENTS; AND (2) WILL BE LIABLE TO THE OTHER, WHETHER A CLAIM BE IN TORT, CONTRACT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, LOST PROFIT, BUSINESS INTERRUPTION, LOSS OF DATA OR SIMILAR DAMAGES RELATING TO OR ARISING FROM THE SERVICES PROVIDED UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY RECEIVES NOTICE OF THE POTENTIAL FOR SUCH DAMAGES. THIS AGREEMENT ALLOCATES RISKS BETWEEN PROVIDER AND CLIENT, AND PROVIDER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION.

(9) **Client's Consent to Network Intrusion and Waiver of Claims.**

a. Some of the techniques Provider will employ in providing the Services would constitute improper and unauthorized access, absent the consent thereto given by Client to Provider herein. Accordingly, on the condition that Provider performs the Services in accordance with the terms of this Agreement (including the provisions of Section 6.b hereof), Client provides its consent to Provider's employment of such invasive and/or intrusive techniques as being part of the Services to be performed at Client's request pursuant to this Agreement.

b. Client's conditional consent to Provider's actions and conditional waiver of claims are based on Client's understanding of its own System as well as its understanding of the Services to be provided pursuant to this Agreement. Client further warrants and represents that it has had the opportunity to question Provider regarding the Services and the techniques involved in implementing the Services, and therefore agrees that its conditional consent and waiver constitute an informed conditional consent and waiver.

c. Notwithstanding any provision of this Article 9 to the contrary, Provider remains obligated to indemnify Client and its Related Parties from and against Losses pursuant to the provisions of Section 7.a of this Agreement.

(10) **Dispute Resolution & Escalation Policy.** The Parties agree to seek to resolve any and all claims, controversies and disputes between them arising out of or relate to this Agreement in accordance with the procedures set forth in this Section 10.

a. **Designation of Dispute.** A Party (the "Complaining Party") that believes that the other (the "Responding Party") is in



Initials

breach of this Agreement in any particular, will deliver written notification to the Responding Party, setting forth in reasonable detail the breach for which the Complaining Party seeks redress, along with a specific request for relief. The Responding Party will have fifteen (15) business days from receipt to provide a written reply. The reply will contain a response to the allegations contained in the notice or any agreement to provide the relief requested. Upon receipt of the reply, the Complaining Party will provide written notice to the Responding Party either that the dispute has been resolved satisfactorily or that the Complaining Party is invoking the escalation procedure set forth in Section 10.b

b. **Escalation Procedure.** In the event that the Parties are unable to resolve a dispute in the manner described in Section 10.a, each Party agrees to designate a single representative to attempt to resolve the dispute. Each Party's representative will be a senior executive who will have all necessary authority to commit the Party contractually and to resolve the dispute. The designated representative will meet for a period of time reasonably necessary to resolve the dispute, at a location to be mutually agreed upon by the Parties, in an effort to resolve the dispute.

(11) **Confidential Information.** Each Party acknowledges that it and its employees or agents may, in the course of the Agreement, be exposed to or acquire information that is proprietary or confidential to the other Party.

"Confidential Information" includes: (a) any information relating to a Party's research, development, trade secrets, processes, procedures, formulas, business practices, business plans, strategies, budgets, client and vendor relationships, personnel data, financial information and other similar business information of a confidential nature; (b) other proprietary information, results of remote assessments, technical guides, technical data or know-how, including, but not limited to, that which relates to Client's hardware, software, screens, specifications, designs, plans, drawings, data, prototypes, discoveries, security policies, passwords, access codes and the like, router, firewall and other such equipment's configuration information, filtering configurations, or any other information directly relating to the integrity or security of the Client network or computer systems; and (c) the methods, systems, data and materials used or provided by Provider in the performance of Services pursuant to this Agreement. Provider acknowledges and agrees that the presence, nature and extent of any security vulnerabilities and other information that Provider discovers regarding Client's information systems and networks during the course of this engagement is Confidential Information of Client.

The term "Confidential Information" does not include information that is: (a) known to the receiving Party prior to disclosure by the disclosing Party or its personnel; (b) publicly available through no act or omission of the receiving Party; (c) lawfully received by the receiving Party from a third party (other than the disclosing Party's former or current personnel) that is not under any confidentiality obligation to the disclosing Party; or (d) comprised of statistical information, or other aggregated information regarding security vulnerabilities, security configurations and the like insofar as such information does not identify Client or Client's computer network or computer systems.

Except as otherwise expressly set forth herein, each Party will use Confidential Information of the other Party which is disclosed to it only for the purposes of this Agreement and will not disclose such Confidential Information to any third party without the disclosing Party's prior written consent. Each Party may disclose to its employees the other Party's Confidential Information on a need-to-know basis in connection with this engagement. Each Party agrees to take measures to protect the confidentiality of the other Party's Confidential Information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own Confidential Information.

Upon the request of the disclosing Party, the recipient will return to the disclosing Party all written Confidential Information, and will promptly destroy all copies of any analyses, summaries or extracts

prepared by the recipient or for its use containing or reflecting any Confidential Information.

Each Party further agrees to promptly advise the other Party in writing of any unauthorized misappropriation, disclosure or use by any person of the Confidential Information of the other Party that may come to its attention and to take all steps reasonably requested by the disclosing Party to limit, restrict or otherwise remedy such misappropriation, disclosure or use.

Nothing in this Agreement will be construed as granting any rights to the receiving Party, by license or otherwise, to any of the disclosing Party's Confidential Information, except as expressly stated in this Agreement. In the event that a Party is required to disclose Confidential Information to a court, governmental agency, requests under State or Federal Freedom of Information Laws (including but not limited to the Texas Public Information Act) or pursuant to any other applicable Legal Requirement, such Party will, to the extent practicable prior to such disclosure, and as soon as practicable and by the best available means, notify the other Party to allow it an adequate opportunity to object to the disclosure order or to take other actions to preserve the confidentiality of the information. Prior to any disclosure pursuant to this Section 11, a Party required to disclose Confidential Information will cooperate with the Party claiming confidentiality of the information in such Party's reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment.

(12) **Ownership and Use of Work Product.** Client will own all deliverables and other material originated, prepared for and/or delivered to the Client under this Agreement, including without limitation, all copyright, patent, trade secret and other proprietary rights pertaining thereto; provided, however, that Provider's working papers and Confidential Information of Provider belong exclusively to Provider except to the extent said working papers contain Confidential Information of Client or material owned by Client under the preceding sentence. To the extent that Confidential Information of Provider is embedded or reflected in the deliverables provided hereunder, Provider hereby grants Client the perpetual, nonexclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, distribute copies of, and prepare derivative works of Provider's Confidential Information and any derivative works thereof, and (b) authorize others to do any or all of the foregoing; provided, however, that said rights will be strictly limited to Client's internal use related to detection, testing, intrusion, penetration, and remediation of security vulnerabilities in Client's own information systems and networks. Except to the extent same include Confidential Information of Client, the ideas, concepts, know-how, techniques, inventions, discoveries and improvements developed during the course of this Agreement by Provider's personnel, alone or in conjunction with Client personnel, may be used by Provider in any way it deems appropriate, including without limitation by or for its clients, without an obligation to account, notwithstanding any provision in this Agreement to the contrary. Nothing in this Agreement will preclude or limit Provider from providing consulting services and/or developing software or materials for itself or other clients.

(13) **General Provisions.**

a. **Severability.** In the event that any provision of this Agreement is determined to be invalid, unenforceable or otherwise illegal, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the Parties, and the remainder of the Agreement will remain in full force and effect.

b. **No Waiver.** No term or condition of this Agreement will be deemed waived, and no breach will be deemed excused, unless such waiver or excuse is in writing and is executed by the Party from whom such waiver or excuse is claimed.

c. **Amendment.** Any amendment of this Agreement will be in writing and signed by both Parties.

d. **Interpretation.** Section numbers and headings are used for convenience and are not to be construed as limitations of the substance of any provision.

e. **Governing Law.** This Agreement will be interpreted under the laws of the State of Texas, with venue in the Federal or State Courts located in Bexar County, Texas.

f. **Force Majeure.** With the exception of a Party's obligation to make payments properly due to the other Party, neither Party will be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason or fire, earthquake, flood, substantial snowstorm, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any failure or delay of any transportation, power, computer or communications system or any other or similar cause beyond that Party's control.

g. **Assignment.** Neither this Agreement nor any right or obligation arising hereunder may be assigned (voluntarily, by operation of law, or otherwise), in whole or in part, by either Party without the consent of the other Party, such consent not to be unreasonably withheld; provided, however, that either Party will have the right, upon written notice to the other Party, to assign this Agreement to any person or entity that acquires all or substantially all of such Party's business or assets. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

h. **Injunctive Relief.** The Parties acknowledge that it will be impossible to measure in money the damage to them caused by any failure to comply with the covenants set forth in Section 11

(Confidential Information), that each such covenant is material, and that in the event of any breach of such provision, the injured Party will not have an adequate remedy at law or in damages. Therefore, in addition to any other remedies to which a Party may be legally entitled, the Parties consent to the issuance of an injunction or the enforcement of other equitable remedies against them at the suit of the other, without bond or other security, to compel performance of all of the terms of Section 11 (Confidential Information), and waive the defense of the availability of relief in damages.

i. **Exclusive Remedies.** The Parties agree that the remedies set forth in this Agreement shall constitute the sole and exclusive remedies available for any breach of this Agreement, including any breach of warranty, express or implied.

j. **Export Controls.** The Parties acknowledge that Provider's Reconnaissance Network Appliance (RNA) is subject to the U.S. Export Administration Regulations and other U.S. law, and may not be exported, re-exported or otherwise transferred contrary to U.S. law. Client agrees to refrain from exporting or re-exporting any RNA device without the advance written permission of Provider.

k. **Counterparts; Facsimiles.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same document. The Parties may sign facsimile copies of this Agreement which will each be deemed originals.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

Intending to be legally bound, Provider and Client have caused this Agreement to be executed by their authorized representatives effective as of the Effective Date.

Agreed to:

DIGITAL DEFENSE, INCORPORATED

By: _____

Print Name: David G. Hargraves

Print Title: Executive VP / CFO

CLIENT

By: _____

Print Name: Hugh Miller

Print Title: CTO/Director of ITSD

Attachments:

- Exhibit A – Description of Services (Proposal)**
- Exhibit B – Order Form**

Exhibit B: Order Form

Client Name: City of San Antonio
Contract Commencement Date: _____
Service Start Date (if different): (C) _____
Initial Contract Term (months): 12
Expiration Date: _____
Main Point of Contact – Client: Hugh Miller **Tel. (210) 207-8301**
Primary Technical Contact – Client: _____ **Tel.** _____
Client Personnel Aware of Digital Defense’s Provision of Services (list below):

Service Products Contracted per this Agreement (NOTE: Prices below are before sales taxes, if any, and are stated in U.S. dollars):

Service Product	Term (months)	Due on Contract Execution (B)
Vulnerability Lifecycle Management - Pro (On-demand external and internal vulnerability assessments on up to 10,000 devices, with outsourced remediation management)	12	\$75,600.00
Remediation Manager – Pro (Time limited remediation project based on findings from the VLM-Pro services)		\$18,400.00
One-Time RNA Right to Use Fee		\$6,000.00
City of San Antonio Credit (The value of this credit will decrease by \$7,833 each month during 2011. To obtain the full \$100,000 in value, the city must commit to a firm program by 12/31/10 as per our original offer.)		(\$100,000.00)
TOTAL DUE ON CONTRACT EXECUTION:		\$0.00

Addressees for Notices:

To Digital Defense:
 Digital Defense, Inc.
 Attn.: President
 9000 Tesoro, Suite 100
 San Antonio, TX 78217
 Facsimile: (210) 822-9216

To Client:
 City of San Antonio
 Attn.: Hugh Miller
 PO Box 839966
 San Antonio, TX 78283-3966
 Facsimile:

- A. Invoiced at execution, or for one time projects, on execution and completion. At Client’s option, may be paid via automatic bank draft. All invoices shall be due and payable upon receipt.
- B. Pricing is based upon information Client has provided Digital Defense as to the number of nodes on Client’s System. If the actual number of nodes (as determined by Digital Defense during testing) proves to be greater than the number supplied by Client, Client agrees to a pro-rata adjustment to the prices listed in this Exhibit B.
- C. Client to note desired start date here. Digital Defense will be able to commence the first service 5-10 business days after receipt of (a) this Agreement, (b) payment of the “Due on Execution” amount noted above, which Client will send to Digital Defense with the signed Agreement, and (c) *all pre-assessment questionnaire documentation and third-party service provider consents (if applicable).*

Exhibit C: Billing and Payment Options

Please review the following, and indicate your preferences for billing and payment methods in conjunction with this Agreement. Should you choose to change your preferences at some point in the future, feel free to contact us by fax at (210) 822-9216, Attn: Controller.

Billing Options (check one and fill in the appropriate blanks):

I would prefer to receive hard copy invoices by mail, addressed to:

Contact:

Address:

City/State/Zip:

Phone:

I would prefer to receive soft copy invoices by e-mail addressed to:

Contact:

Email:

I would prefer not to receive invoices, and instead just arrange automatic payment (below).

Payment Options (check one):

I would like to make my payments by wire transfer.

I would like to make my payments by ACH transfer.

I would like to make my payments by check sent via US Mail.

To pay by wire or ACH transfer, Digital Defense's bank information follows:

Bank:	PlainsCapital Bank, San Antonio, TX
ABA Routing Number:	111-322994
Account Name:	Digital Defense, Inc.
Account Number:	5100001493