

CITY OF SAN ANTONIO

Department of Community Initiatives



**REQUEST FOR QUALIFICATIONS
("RFQ")**

for

**Various Artistic and Consulting Services
DCI FY 2011**

Application Packet Guidelines

**Release Date: Friday, February 18, 2011
Proposals Accepted through September 30, 2011**

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NOTICE: Application submitted after October 1, 2010 shall remain valid through the extended term of September 30, 2011 unless the Respondent submits a written notification to the City requesting removal from the Vendor List.

I. BACKGROUND

The City of San Antonio (City), Department of Community Initiatives (DCI) is requesting applications from qualified firms, artists, consultants, academic institutions, non-profit organizations, public policy research institutions, etc. to provide professional and consulting services as described in this package. DCI will use responses from qualified Respondents to compile a vendor list which will be maintained for use by the City to enter into Professional Services Contracts on an “as needed” or “as requested” basis. Contracts through this Request for Qualifications (RFQ) could begin anytime after issuance and upon receipt of acceptable information related to the Respondent’s capabilities, qualifications and competence. There is no deadline to submit an application; as needs are identified, contracts will be awarded. A Respondent who submits early in the process will be afforded a greater opportunity to contract with the City.

The City will contract with selected Respondents to provide services in the following categories:

- Artistic Services;
- Planning, Research and Development;
- Staff/Volunteer/Participant Training and Teaching;
- Volunteer Income Tax Assistance Site Operations; and
- Direct Professional Services

A list of anticipated services to be purchased is included in Attachment F – Service Matrix and Fee Schedule.

Generally, a contract awarded under this RFQ may not exceed \$50,000.00 within the same fiscal year, which begins October 1st and ends September 30th. In the event that multiple contracts with identical scope of services are awarded to the same Respondent, the combined total shall not exceed \$50,000.00 within the same fiscal year. Participation in this RFQ does not adversely affect nor does it bar the applicant from participating in other City procurements. The \$50,000.00 limit that is intended to be imposed under this RFQ does not apply to other Request for Proposals, Request for Offers, Bids, Best Value Bids, or other competitive procurement methods that may be offered during the term of this RFQ.

II. SCOPE OF SERVICES

For each type of service offered, Respondent is to attach a description of the specific scope, curriculum, and/or sample as well as completing Attachment F - Service Matrix and Fee Schedule.

Artistic Services

The City anticipates that most contracts with Artists will be for training of program participants and should offer the participant an opportunity to delve into the aspects of artistic creativity through hands-on instruction. However, artistic services may be contracted for other uses such as advertising, etc. The City typically provides payment for artistic services upon completion of the art item or service.

Artists should provide the following with their application:

- Resume of the Artist;
- Experience in teaching others (include description of population that Artist taught);
- Recent and/or most significant works by the Artist (include name, date, place and description of any exhibits);
- Sample of art work; and
- References, as applicable.

Planning, Research and Development Services

Planners, Researchers and/or Developers should include the following with their application:

- Resume of the Planner(s), Researcher(s) and/or Developer(s);
- Experience in *Planning, Research and Development Services* (at a minimum, include timelines, the type and date of planning, research or development completed, name of organization for which the work was completed, and a writing and/or data analysis sample);
- Experience in facilitation (include description of facilitation that includes the population affected and types of data or instruments used);
- Descriptive methodological approaches;
- Measurable outcomes and recommendations;
- Experience in implementing recommendations or grants; and
- References, as applicable.

Staff / Volunteer / Participant Training and Teaching

Trainers should include the following with their application:

- Resume of the Trainer/Teacher;
- Experience in delivering training/teaching to include description of population trained/taught, organizational levels (i.e. - line, supervisory, management, executive), position classifications, and educational levels;
- Description of Training/Teaching Philosophy and Methodological Approaches;
- Description of Curriculum (include timelines);
- Evaluation Instruments;
- Measurable Outcomes;
- Bilingual capability, if applicable;
- References, as applicable.

Volunteer Income Tax Assistance (VITA)

Site operators shall include the following with their application:

- Assurance that the VITA site operator will offer free income tax return preparation to qualified working families;
- Experience in delivering similar services;
- Description of the methodology to be used to recruit qualified working families;
- Description of hours of operation (Sites must operate during various hours, including evenings and weekends, beginning January 2010 through April 2010.);
- Description of how the VITA site coordinator will manage site operations, assign volunteer tax preparers, ensure tax returns are completed accurately and in a timely manner, and report problems or concerns to the City;
- Resume or Job Description of the Site Coordinator and clerical staff. (Each site must be staffed with a site coordinator, at least one clerical person, and sufficient tax preparers to operate a minimum of 27 hours per week depending upon site operating hours and days of operation.);
- Bilingual capability, if applicable;
- References, as applicable.

City support for VITA site operators:

The City will train site coordinators, clerical staff and tax preparers, provide tax preparation software and technical assistance. Printed site identification signs will be provided. Other outreach materials will be created by the City for duplication at the sole cost to the site coordinator.

Technical skills in tax preparation are not required but would be helpful. Site Coordinators, clerical staff and tax preparers are required to attend and successfully complete IRS tax preparation training.

Direct Professional Services

These services are as defined by Texas Government Code Chapter 2254 - Professional and Consulting Services.

To obtain detailed information, go to the following web address:

<http://www.statutes.legis.state.tx.us/SOTWDocs/GV/pdf/GV.2254.pdf>

III. TERM OF THE CONTRACT

Terms for awarded contracts as a result of this RFQ shall vary depending upon the type, nature, scope of the service offered as well as City requirements. Payment for services shall be made upon successful completion of work as approved by the City.

IV. SUBMISSION REQUIREMENTS

Respondent's Application shall include the following items in the sequence listed below. **Note:** Application Packet Guidelines are informational instructions and should NOT be included with the Respondents application submission.

- A. **APPLICATION CHECKLIST**: Complete and submit **Attachment A** - Application Checklist.
- B. **RESPONDENT QUESTIONNAIRE / CERTIFICATION**: Complete, sign and submit **Attachment B** - Respondent Questionnaire. This sheet must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal.
- C. **VENDOR APPLICATION FORM**: Complete and submit **Attachment C** – Vendor Application Form which may be downloaded at:
<http://www.sanantonio.gov/Purchasing/pdf/Vendor%20Master%20Creation%20Request%20Form.doc>.
- D. **DISCRETIONARY CONTRACTS DISCLOSURE FORM**: Use the Form in RFQ **Attachment D** which is posted as a separate document or Respondent may download a copy at:
<https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form.

Instructions for completing the Discretionary Contracts Disclosure form:

1. Download form and complete all fields. All fields must be completed prior to printing the form.
2. Click on the "Print" button and place the copy in your proposal as indicated in the Proposal Checklist.

- E. LITIGATION DISCLOSURE FORM: Complete and submit the Litigation Disclosure Form, found in this RFQ as **Attachment E**. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form.
- F. SERVICE MATRIX AND FEE SCHEDULE: Complete and submit **Attachment F** - Service Matrix and Fee Schedule.
- G. DESCRIPTION OF SERVICES AND/OR CURRICULUM: For each Type of Service marked on Attachment F – Service Matrix and Fee Schedule, prepare and submit narrative responses to address the following items. For each service, the response should be limited to less than 1,000 words or a maximum of two (2), single-sided pages.
1. Name of Applicant.
 2. Type of service(s) offered.
 3. Rationale for the Program/Project.
 4. Explanation of the theories upon which the training or other approach is based.
 5. Objectives of the Program/Project.
 6. Content of the Program/Project.
 7. Methods to be used.
 8. Materials needed (including who is to provide them).
 9. Total Cost Estimate of the Program/Project.
 10. Ability to tailor work to meet the City’s specific needs and requirements.
 11. Explanation of how the results of the program/project will be evaluated.
- H. SAMPLES OF WORK, BROCHURES, and/or TRAINING CURRICULUM: Include samples of work, brochures, training curriculum and other relevant information about Respondent you wish the City to consider in its selection.
- I. REFERENCES AND QUALIFICATIONS: Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team, partnership or joint venture. In rating the application, the City will consider the extent to which the organization has the resources and experience necessary to provide the proposed services.
1. Background of Respondent and support personnel, including professional qualifications and length of time working in Respondent’s capacity. Include résumés of key personnel for services that Respondent proposes to perform.
 2. Relevant experience of Respondent as it relates to the scope of services contemplated by the RFQ.
 3. Specific experience with public entity clients, especially large municipalities. If Respondent has provided services for the City in the past, identify the name of the project

and the department for which Respondent provided those services. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

4. Other resources, including total number of employees, number and location of offices, number and types of equipment available to support this project.
5. Respondent shall provide three (3) letters of recommendation, preferably from municipalities, for whom Respondent has provided services.
6. If Respondent has had experience in working as a member of a joint venture or team, describe that experience, including the type of project for which the joint venture or team was formed.

Respondent is expected to examine this RFQ carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF REQUIRED DOCUMENTS MAY RESULT IN THE RESPONDENT'S APPLICATION BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

V. SUBMISSION OF APPLICATION

- A. Respondent shall submit one (1) original, signed in ink, application packet in a sealed package, clearly marked on the front of the package **Various Artistic & Consulting Services FY 2011**.

Mailing Address:

City of San Antonio
Department of Community Initiatives
ATTN: Contract Services Section
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City of San Antonio
Department of Community Initiatives
ATTN: Contract Services Section
115 Plaza de Armas, Ste 210
San Antonio, Texas 78205

Applications sent by facsimile will not be accepted.

- B. **Application Due Date:** Application submissions in response to this RFQ will be accepted through September 30, 2011. Applicants are encouraged to submit applications early in the process in order to have the greatest opportunity for contracting with the City. City may begin making awards immediately upon receipt of an application at such time that the City determines there is a need for such service and there is a qualified applicant to provide such service.

- C. **Application Format:** Each Application must include the sections and attachments in the sequence listed in the Application Requirements Section. Failure to meet these conditions may result in disqualification of the Application.
- D. Respondents who submit responses to this RFQ shall correctly reveal, disclose, and state the true and correct entity, individual, proprietorship name, corporate name, and /or partnership name (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nick-names, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings.

If a staff recommendation is made to award a contract to any entity that is later found to have incorrectly or incompletely stated its name or failed to fully reveal its identity in its application, the Director of the Department of Community Initiatives or designee shall have the discretion, at any point in the contracting process, to suspend consideration of the application, or to terminate a contract, if already awarded.

- E. All provisions in Respondent's application, including any estimated or projected costs, shall remain valid through September 30, 2011.
- F. All applications become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- G. Any cost or expense incurred by the Respondent that is associated with the preparation of the application or during any phase of the selection process, shall be borne solely by Respondent.

VI. COMMUNICATION

- A. Respondents may ask verbal questions or submit written questions concerning this RFQ by contacting the Staff Contact Person listed in the address:

Norma Saldana, Human Development Services Fund (HDSF) Coordinator
City of San Antonio, Department of Community Initiatives
norma.saldana@sanantonio.gov
Office: (210) 207-7848

- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City.

VII. EVALUATION CRITERIA

Criteria to be evaluated shall include the items listed below. The City may select all, some or none of the Respondents for interviews. The City reserves the right to select one, or more, or none of the Respondents to provide services.

Evaluation criteria:

- A. Economic Evaluation of the Proposed Fee Schedule.
- B. Respondent's capability to provide the services requested and information contained in the Respondent's application.
 - 1. Background of Respondent and support personnel, including professional qualifications and length of time working in Respondent's capacity.
 - 2. Relevant experience of Respondent.
 - 3. Specific experience with public entity clients, especially large municipalities.
 - 4. Resources available to support this project, including total number of employees, number and location of offices, number and types of equipment available.
 - 5. References of Respondent.
- C. Services to be purchased – Proposed approach and appropriateness of services.

VIII. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

- A. City reserves the right to award one, more than one, or no contract(s) in response to this RFQ.
- B. The contract, if awarded, will be awarded to the Respondent(s) whose Qualification(s) is deemed most advantageous to City, as determined by the City.
- C. City may accept any application in whole, or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate application on the part of City.
- D. City reserves the right to accept one or more applications or reject any or all applications received in response to this RFQ, and to waive informalities and irregularities in the applications received. City also reserves the right to terminate this RFQ, and reissue a subsequent solicitation, and/or remedy technical errors in the RFQ process.
- E. If selected, Respondent shall execute a contract, in substantially the form attached hereto and incorporated herein as Exhibit C, no later than ten (10) calendar days after notice of contract award. No work shall commence until the contract document(s) is signed by City and Respondent(s) provides the necessary evidence of insurance as required by the contract. Contract documents are not binding on the City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

- F. This RFQ does not commit City to enter into a Contract, award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of an application or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract number that shall be provided by the City.
- I. Conflicts of Interest. Respondent 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 the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse 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; or 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.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City’s Ethics Code. (Discretionary Contracts Disclosure – form may be found online at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.) (Discretionary Contracts Disclosure – **Attachment D**)

- J. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for their respective acts or omissions, and the City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- K. Effective as of January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Please consult your own legal advisor if you have questions regarding the statute or form.

Do **not** submit Conflict of Interest Questionnaire form to the Department of Community Initiatives.

RFQ EXHIBIT A

INSURANCE REQUIREMENTS

If selected to provide the services described in this RFQ, Respondent shall be required to comply with the insurance requirements set forth below:

- A) Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City’s Department of Community Initiatives, which shall be clearly labeled “**Various Artistic and Consulting Services FY 2011**” 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 Department of Community Initiatives. No officer or employee, other than the City’s Risk Manager, shall have 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 coverage’s 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 Respondent’s financial integrity is of interest to the City; therefore, subject to Respondent’s right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent’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 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form 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 <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

Type	Amounts
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence, or its equivalent in Umbrella or Excess Liability Coverage.
5. Professional Liability* (Claims Made Form)	\$500,000 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.

* Required insurance for professional service contracts.

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). Respondent shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the address provided below within 10 days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

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

E) Respondent 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 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.

- F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent'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 the City may have upon Respondent'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 Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.
- H) Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.
- I) It is agreed that Respondent'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 this Agreement.
- K) Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.

RFQ EXHIBIT B

INDEMNIFICATION REQUIREMENTS

If selected to provide the services described in this RFQ, Respondent shall be required to comply with the indemnification requirements set forth below:

RESPONDENT 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 RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant 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 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. 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 own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by City in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that City is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT 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.

Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, 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 CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

III. SCOPE OF SERVICES

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the Statement of Work and Budget, attached hereto as Attachment "A". Goals, objectives and performance standards for the Project will be established by the CITY's Department of Community Initiatives and CONSULTANT agrees to comply with said goals, objectives and performance standards. The CONSULTANT understands and agrees that Attachment A is a part of the CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the CONSULTANT as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this CONTRACT.

IV. TERMINATION

- 4.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 4.2 **TERMINATION BY NOTICE:** The CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.
- 4.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 4.4 **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 CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 4.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.
- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.8 In the event that through action or no action initiated by the City of San Antonio, the CITY's legislative body does not appropriate funds for the continuation of a contract and has no funds to do so from other sources, this CONTRACT may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.

V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.

- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 5.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the CONSULTANT.

VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.
- 6.3 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable federal laws, state laws, the San Antonio City Charter, City ordinance, rules and regulations.
- 6.4 If the CONSULTANT receives inquiries regarding documents within their possession pursuant to the CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.2 The CITY shall own the copyright of whatever nature or extent and in all media whatsoever to any documents and records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. CONSULTANT and its employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY. Provided, however, nothing herein contained is intended nor shall it be construed to require CONSULTANT to transfer any ownership interest in Consultant's best practice and benchmarking information to the CITY.

VIII. INTELLECTUAL PROPERTY

- 8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. CONSULTANT shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly notify the CITY and provide the CITY with all information related to the suspected infringement.
- 8.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, CONSULTANT will immediately:

8.2.1 Either:

- a) obtain, at CONSULTANT's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c) reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

8.2.2 CONSULTANT further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this CONTRACT,
- b) assume the expense of such defense, including costs of investigations, attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided:

- CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONSULTANT agrees to consult with the City Attorney of the CITY, or other counsel designated by the CITY, during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the CITY,
- that the Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the CITY's negligent act or omission, and
- that the CITY promptly provides CONSULTANT with written notice within **15** days following the formal assertion of any claim with respect to which the CITY asserts that CONSULTANT assumes responsibility under this section.

IX. RECORDS

- 9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONSULTANT.
- 9.2 CONSULTANT shall deliver all CONTRACT related documents and reports to the CITY, upon termination of the CONTRACT, in a timely and expeditious manner, at CONSULTANT's sole cost and expense.
- 9.3 The CONSULTANT shall retain all records owned by or to which the CITY has access to, for the retention periods set forth in the Texas Local Government Records Act.
- 9.4 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated pursuant to this CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such requests.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available to CITY, at CITY's Department of Community Initiatives, 115 Plaza de Armas, San Antonio, Texas, at all reasonable times and as often as CITY may deem necessary during the CONTRACT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

XI. LICENSES AND CERTIFICATIONS

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

XII. CONFLICT OF INTEREST

12.1 CONSULTANT 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 the Ethics Code, from having a financial interest in any CONTRACT with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a “prohibited financial interest” in a CONTRACT with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the CONTRACT or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse 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 in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XIII. INSURANCE

13.1 Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY’s Department of Community Initiatives, which shall be clearly labeled “Consulting Services – _____” 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 CONTRACT until such certificate and endorsements have been received and approved by the CITY’s Community Initiatives Department. No officer or employee, other than the CITY’s Risk Manager, shall have authority to waive this requirement.

13.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT 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 CONTRACT. In no instance will CITY allow modification whereupon CITY may incur increased risk.

13.3 A CONSULTANT’s financial integrity is of interest to the CITY; therefore, subject to CONSULTANT’s right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT’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:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000

<p>3. Broad Form General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability 	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence, or its equivalent in Umbrella or Excess Liability Coverage.</p>
<p>5. Professional Liability* (Claims Made Form)</p>	<p>\$500,000 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.</p>

* Required insurance for professional service contracts.

13.4 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). CONSULTANT 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. CONSULTANT shall pay any costs incurred resulting from said changes.

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

13.5 CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the CITY of San Antonio where the CITY is an additional insured shown on the policy;
- Workers' compensation 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.

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

13.7 In addition to any other remedies the CITY may have upon CONSULTANT'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 CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- 13.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this CONTRACT.
- 13.9 It is agreed that CONSULTANT'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 CONTRACT.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT.
- 13.11 CONSULTANT and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNITY

- 14.1 **CONSULTANT 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 CONSULTANT'S activities under this CONTRACT including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, 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 CONSULTANT 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.**
- 14.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.
- 14.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by City in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that City is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT 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.
- 14.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, 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 CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XV. AMENDMENT

- 15.1 This CONTRACT, together with its authorizing ordinance and exhibits, if any, shall constitute the full and final agreement between the parties hereto.

- 15.2 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the date hereof.
- 15.3 It is understood and agreed by 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. The CONSULTANT expressly agrees to comply with all applicable federal, state, and local laws.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Attn: Gloria Hurtado, Director
Department of Community Initiatives
115 Plaza de Armas, Suite 210
San Antonio, Texas 78205

CONSULTANT

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

- 18.1 Any subcontracts or assignments on interests entered into by CONSULTANT concerning work tasks for this CONTRACT shall be communicated in writing to CITY prior to the effective date of this CONTRACT and prior to commencement of any work subsequent to this CONTRACT's effective date. CONSULTANT shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of CITY. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should CONSULTANT assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the CITY may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.
- 18.2 CONSULTANT's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with CONSULTANT arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. CONSULTANT shall indicate this limitation in all contracts with approved subcontractors.
- 18.3 CONSULTANT agrees to notify CITY of any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the CITY.
- 18.4 In no event shall such written consent, if obtained, relieve CONSULTANT from any and all obligations hereunder or change the terms of this CONTRACT.
- 18.5 CITY must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIX. SUCCESSORS AND ASSIGNS

- 19.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

XX. NON WAIVER

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the CONSULTANT from any covenants and conditions required in this CONTRACT.

XXI. COMPLIANCE

- 21.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 21.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Additionally, CONSULTANT agrees to abide by all applicable provisions of San Antonio City Code Section 2-8, as amended. Also, CONSULTANT certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
 - a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing the foregoing laws.
- 21.4 The funding level of this CONTRACT is based on the receipt of funds from the General Fund [and the GRANTOR, IF GRANT FUNDED, for the GRANT PROGRAM], a budget allocation to the Department of Community Initiatives, and the appropriation for the [PROJECT NAME]. The budget for this CONTRACT may be adjusted to correspond to the actual award, if this contract is grant funded. In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio [and ENTER GRANTOR, IF GRANT FUNDED] rules and regulations, shall have the final authority to render or secure an interpretation.

XXII. VENUE AND GOVERNING LAW

- 22.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

XXIII. SEVERABILITY

- 23.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future laws during the term of this CONTRACT, including any extension and renewal hereof, it is the intention of the parties hereto that the remainder of the CONTRACT shall not be affected thereby, and that in lieu of each clause or provision of the CONTRACT that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the CONTRACT.

XXIV. GENDER

24.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

25.1 The captions contained in this CONTRACT are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this CONTRACT.

XXVI. ENTIRE AGREEMENT

26.1 Each of the Attachments listed below is an essential part of the CONTRACT, which governs the rights and duties of the parties. This CONTRACT, together with its authorizing ordinance, exhibits and attachments, if any, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties unless same is executed in accordance with Section XV.

EXECUTED this the _____ day of _____, _____.

CITY

CONSULTANT

City of San Antonio, Texas

Cindy Schoenmakers, Interim Director
Department of Community Initiatives

APPROVED AS TO FORM:

City Attorney

Attachment A – Statement of Work and Budget
Attachment B – Respondent Questionnaire / Certification

APPLICATION

FORMS

RFQ Attachment A

APPLICATION CHECKLIST

Name of Applicant: _____

Use this checklist to ensure that all required documents have been included and appear in the correct order of the application. Documents with an asterisk (*) require original signatures.

Document	Initial to Indicate Document is Attached to Application
Application Checklist <ul style="list-style-type: none"> • Attachment A 	
* Respondent Questionnaire/Certification <ul style="list-style-type: none"> • Attachment B 	
* Vendor Application Form <ul style="list-style-type: none"> • Attachment C 	
Discretionary Contracts Disclosure <ul style="list-style-type: none"> • Attachment D 	
* Litigation Disclosure Form <ul style="list-style-type: none"> • Attachment E 	
Service Matrix and Fee Schedule <ul style="list-style-type: none"> • Attachment F 	
Description of Services and/or Curriculum	
Samples of Work and/or Brochures	
References and Qualifications <ul style="list-style-type: none"> • Description of Qualifications • Résumés of Key Personnel • Three (3) References 	

*** Documents marked with an asterisk on this checklist require a signature prior to submittal of application.**

Note: Application Packet Guidelines are informational instructions and should NOT be included with the Respondents application submission.

RFQ Attachment B

RESPONDENT QUESTIONNAIRE / CERTIFICATION

The purpose of this Questionnaire / Certification is to assist in selection of a Qualified Consultant to provide Professional Services valued at less than \$50,000.00 for the scope of services to the City of San Antonio, Department of Community Initiatives.

1. Respondent Information: Provide the following information regarding the Respondent.

(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: _____

(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Website address: _____

Year established: _____

Provide the number of years in business under present name: _____

Social Security Number or Federal Employer Identification Number: _____

Texas Comptroller's Taxpayer Number, if applicable: _____

(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: _____

Business Structure: Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship If checked, list Assumed Name, if any: _____

Partnership

Corporation If checked, check one: For-Profit Nonprofit

Also, check one: Domestic Foreign

Other If checked, list business structure: _____

2. Contact Information: List the one person who the City may contact concerning your proposal or setting dates for meetings.

Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes No

4. Is Respondent authorized and/or licensed to do business in Texas?

Yes No

If "Yes", list authorizations/licenses.

5. Where is the Respondent's corporate headquarters located? _____

6. **Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes No If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its San Antonio office?

Years _____ Months _____

b. State the number of full-time employees at the San Antonio office. _____

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes No If "Yes", respond to c and d below:

c. How long has the Respondent conducted business from its Bexar County office?

Years _____ Months _____

d. State the number of full-time employees at the Bexar County office. _____

7. **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes No

If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

8. **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No

If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

9. **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes No

If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

10. **Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If "Yes", state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

11. **Previous Contracts:**

a. Has the Respondent ever failed to complete any contract awarded?

Yes No

If "Yes", state the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes No

If "Yes", state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

- c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes No

If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

12. Provide any other names you or your business has used within the last 10 years.

13. Respondent understands that this RFQ does not commit City to enter into a contract, award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of an application or proposal in anticipation of a contract.

14. Respondent agrees that, if selected for a contract, it will invoice the City as required in the contract and that payment terms for the contract will be net 30 days.

15. The Respondent and its principals certify that they:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;

(b) Have not within a three-year period preceding this application submission been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with the commission of any of the offenses enumerated in Paragraph 8b) of this certification; and,

(d) Have not within a three-year period preceding this application submission had one or more public transactions terminated for cause or default.

Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective recipient shall attach an explanation to their application.

16. The Respondent executing this document certifies that the following indicated statement is true and correct and that the Respondent understands that making a false statement may be deemed a material breach of the Contract and may be grounds for contract cancellation and/or removal from the Consultant list. Please **check** the applicable statement.

Not applicable. Contractor is not a corporation.

If contractor is a corporation, indicate the below certification that applies to your corporation by checking the applicable statement:

The corporation is a **for-profit** corporation and certifies that it is not delinquent in its franchise tax payments to the State of Texas.

The corporation is a **non-profit** corporation or is otherwise not subject to payment of franchise taxes to the State of Texas.

17. Respondent certifies that if awarded a contract in response to this RFQ, Respondent will be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City.
18. Respondent agrees that this offer is firm and good through September 30, 2010.
19. The signer of this application represents, warrants, assures and guarantees that he or she has full legal authority to submit qualifications, quotes, or proposals on behalf of Respondent, and to bind Respondent to all of the terms, conditions, provisions and obligations herein contained and has the requisite authority to execute an agreement on behalf of Respondent, if awarded. I, the undersigned certify that to the best of my knowledge, all information provided by myself/Respondent in this application is true and correct.

Signature of Individual Authorized to Bind Respondent

Printed Name of Individual Authorized to Bind Respondent

Title of Individual Authorized to Bind Respondent
(if you are an individual rather than a company representative, your title is "self")

RFQ Attachment C

VENDOR APPLICATION FORM

To be submitted with Respondent's Proposal as ATTACHMENT C

Vendor Application Form may be downloaded at:

<http://www.sanantonio.gov/Purchasing/pdf/Vendor%20Master%20Creation%20Request%20Form.doc>

RFQ Attachment D

DISCRETIONARY CONTRACTS DISCLOSURE

To be submitted with Respondent's Proposal as ATTACHMENT D

Discretionary Contracts Disclosure Form is posted as a separate document or may be downloaded at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.

Instructions for completing the Discretionary Contracts Disclosure form are listed below:

1. Download form and complete all fields.
Note: All fields must be completed prior to submitting the form.
2. Click on the "Print" button and place the copy in proposal response as indicated in the Proposal Checklist as **Attachment D**.

RFQ Attachment E

LITIGATION DISCLOSURE

Name of Applicant: _____

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your application from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Check One Yes No

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Check One Yes No

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Check One Yes No

If you have answered “YES” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

RFQ Attachment F

Name of Applicant: _____

SERVICE TYPES	Mark Services You Will Offer	Enter Proposed Price and Term (Hourly, Daily, Weekly, Project)
Professional Service Category – ARTISTS		
Drawing / Sketching	<input type="checkbox"/>	\$ per
Painting / Murals	<input type="checkbox"/>	\$ per
Photography	<input type="checkbox"/>	\$ per
Sculpting	<input type="checkbox"/>	\$ per
Other Artistic Services (Please Describe)	<input type="checkbox"/>	\$ per
Professional Service Category – PLANNING, RESEARCH, AND DEVELOPMENT		
Compilation of data from local stakeholders	<input type="checkbox"/>	\$ per
Cost Analysis / Benchmarking	<input type="checkbox"/>	\$ per
Data Analysis / statistical analysis / regression analysis	<input type="checkbox"/>	\$ per
Deliverables: Report / Recommendations	<input type="checkbox"/>	\$ per
Development of Policies	<input type="checkbox"/>	\$ per
Development of Power Point Slide Presentations	<input type="checkbox"/>	\$ per
Development of Procedures	<input type="checkbox"/>	\$ per
Dietician	<input type="checkbox"/>	\$ per
Grant Proposal Writing	<input type="checkbox"/>	\$ per
Meeting Facilitation	<input type="checkbox"/>	\$ per
Meeting Planning	<input type="checkbox"/>	\$ per
Monitoring / Fiscal Analysis	<input type="checkbox"/>	\$ per
Monitoring / Program Analysis	<input type="checkbox"/>	\$ per
Needs Assessments	<input type="checkbox"/>	\$ per
Operational Planning	<input type="checkbox"/>	\$ per
Partnership / Collaboration Building	<input type="checkbox"/>	\$ per
Performance Measurement Research / Benchmarking	<input type="checkbox"/>	\$ per
Public Hearing Facilitation	<input type="checkbox"/>	\$ per
Public Hearing Planning	<input type="checkbox"/>	\$ per
Public Policy Research and Evaluation	<input type="checkbox"/>	\$ per
Strategic Planning	<input type="checkbox"/>	\$ per
Surveys and Research Analysis	<input type="checkbox"/>	\$ per
Systems Analysis	<input type="checkbox"/>	\$ per
Other Planning Research and Development (Please Describe)	<input type="checkbox"/>	\$ per

Attachment F

Name of Applicant: _____

SERVICE TYPES	Mark Services You Will Offer	Enter Proposed Price and Term (Hourly, Daily, Weekly, Project)
Professional Service Category – STAFF / VOLUNTEER / CUSTOMER TRAINING		
Agency Referral Training	<input type="checkbox"/>	\$ per
Case Management	<input type="checkbox"/>	\$ per
Client Management	<input type="checkbox"/>	\$ per
Conflict Resolution	<input type="checkbox"/>	\$ per
Crisis Response Management/Crisis Intervention	<input type="checkbox"/>	\$ per
Customer Service	<input type="checkbox"/>	\$ per
Dance Instructor	<input type="checkbox"/>	\$ per
Diversity / Cultural Awareness Training	<input type="checkbox"/>	\$ per
GED Instructor	<input type="checkbox"/>	\$ per
Information Technology	<input type="checkbox"/>	\$ per
Job Development	<input type="checkbox"/>	\$ per
Management Development	<input type="checkbox"/>	\$ per
Professional Development	<input type="checkbox"/>	\$ per
Working with At-Risk Youth	<input type="checkbox"/>	\$ per
Working with Teen Parents	<input type="checkbox"/>	\$ per
Volunteer Income Tax Assistance Training	<input type="checkbox"/>	\$ per
Other Staff/Volunteer Training (Please Describe)	<input type="checkbox"/>	\$ per
Professional Service Category – DIRECT PROFESSIONAL SERVICES		
Housing /Lending Counseling	<input type="checkbox"/>	\$ per
Casework / Case management	<input type="checkbox"/>	\$ per
Lighting Technician	<input type="checkbox"/>	\$ per
Sound Technician	<input type="checkbox"/>	\$ per
Tax Preparer	<input type="checkbox"/>	\$ per
Other Direct Service (Please Describe)	<input type="checkbox"/>	\$ per
Professional Service Category – VOLUNTEER INCOME TAX ASSISTANCE (VITA)		
Volunteer Income Tax Assistance (VITA) Site Operations	<input type="checkbox"/>	Requested Annual Budget \$
Volunteer Income Tax Assistance (VITA) site coordinator	<input type="checkbox"/>	Requested Annual Budget \$