LOC
11/19/15
Item No. 23

AN ORDINANCE 2015-11-19-0973

AUTHORIZING THREE PROFESSIONAL SERVICES AGREEMENTS WITH LABOR ON DEMAND, INC., STABILITY STAFFING AND CONSULTING, LLC, AND TRI-STARR PERSONNEL, LLC DBA TRI-STARR GROUP, TO PROVIDE TEMPORARY STAFFING SERVICES ON A PAY PER USE BASIS TO CITY DEPARTMENTS, FOR A THREE YEAR TERM, WITH TWO RENEWAL TERMS OF ONE YEAR EACH, FOR AN ESTIMATED ANNUAL COST OF $5,000,000.00, FUNDED BY DEPARTMENT BUDGET APPROPRIATIONS.

* * * * *

WHEREAS, the City released a Request for Proposals (RFP) to provide the City with temporary staffing services; and

WHEREAS, of the twelve proposals received, one respondent withdrew, five were deemed non-responsive, one was disqualified and four were evaluated in conformance with the criteria contained in the RFP; and

WHEREAS, the evaluation committee recommends Labor on Demand, Inc., Stability Staffing and Consulting, LLC, and Tri-Starr Personnel, LLC d/b/a Tri-Starr Group, the top three scoring respondents, for award of this contract; **NOW THEREFORE:**

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

SECTION 1. Labor on Demand, Inc., Stability Staffing and Consulting, LLC, and Tri-Starr Personnel, LLC d/b/a Tri-Starr Group are all hereby selected to provide temporary staffing services for an estimated annual cost of $5,000,000. The City Manager, her designee, and the Director of the Human Resources Department are hereby authorized to execute the contracts for said services, copies of which are attached hereto and incorporated herein as **Exhibit I**. The terms of said contracts are hereby approved.

SECTION 2. The amounts will be encumbered upon issuance of various purchase orders, and payment is authorized to the parties identified herein. All expenditures will be in accordance with the Fiscal Year 2016 and subsequent budgets that fall within the term period of this contract approved by City Council.

SECTION 3. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

PASSED AND APPROVED this 19th day of November, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for L. O'Connor
Martha G. Sepeda, Acting City Attorney

Agenda Item:	**23 (in consent vote: 5, 6, 7, 8, 9A, 9B, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26A, 26B)**
Date:	11/19/2015
Time:	09:11:03 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing three professional services agreements with Labor on Demand, Inc., Stability Staffing and Consulting, LLC, and Tri-Starr Personnel, LLC, dba Tri-Starr Group to provide temporary staffing services on a pay per use basis to city departments, for a three year term, with two renewal terms of one year each, for an estimated annual cost of $5,000,000.00, funded by department budget appropriations. [Ben Gorzell, Chief Financial Officer; Lori Steward, Director, Human Resources]
Result:	Passed

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

PROFESSIONAL SERVICES AGREEMENT
FOR
TEMPORARY PERSONNEL SERVICES

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, or her designee, pursuant to Ordinance No. 2015-__-__-____ and Stability Staffing and Consulting, LLC, by and through Jennifer Delgado, its President and CEO ("Consultant" or "Agency"), both of which may be referred to herein collectively as the "Parties".

Whereas, City issued a request for proposals ("RFP") for temporary employment agencies to provide administrative, clerical, and other business related positions that would be considered both exempt and non-exempt under the Fair Labor Standards Act (FLSA); and

Whereas, the length of any individual assignment would vary and be based on the needs of the particular City department and/or office requesting same; and

Whereas, Agency submitted a response to said RFP and is willing to provide the services described herein, with the understanding that this will not be an exclusive contract;

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

I. DEFINITIONS

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

1.1 *Agency* is defined in the preamble of this Agreement and includes its successors.

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

1.3 *Consultant* is defined in the preamble of this Agreement and includes its successors.

1.4 *Director* shall mean the acting director of City's Human Resources Department.

1.5 *Mark-Up Percentage* – the fee charged by Agency to City for its services hereunder. The Mark-Up Percentage is a percentage of the regular hourly rate (not the overtime rate) for the assigned temporary employee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 20, 2015 and terminate on December 20, 2018.

2.2 This Agreement may be renewed by City on the same terms and conditions for two additional one year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council ("City Council"). However, all renewals are subject to and contingent upon appropriation of funds therefore by the City Council

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Agency agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 All work performed by Agency hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Agency, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Agency's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 When it is determined by City that temporary personnel services are required, Agency will be contacted via telephone or email with a position description for a temporary employee, the hourly rate that has been budgeted for that particular position, location of job site and the estimated duration period of the assignment. Agency shall provide a list of qualified candidates along with their résumés, curriculum vitae, reference information or other qualifications based information as requested by City for City to review within 3 calendar days from City's request at the latest. If City has selected an individual, Agency shall fill the request within a reasonable timeframe depending on the urgency of the services needed, on average within forty-eight (48) hours. City shall have the discretion to reject all possible candidates and secure the position from other sources if Agency's candidates do not meet City requirements, as solely determined by City. Parties agree that this is not an exclusive contract.

3.4 Agency shall be responsible for ensuring that each employee sent to work at the City meets the minimum qualifications of the position, has tested negative for controlled substance(s), using a 10 panel drug screening urine test after a conditional acceptance for placement with City, and has successfully undergone a background check for criminal conviction(s), evaluated based level of offense, date of offense and relevance to the position being filled, as recommended by EEOC guidelines. Minimum education and experience qualifications are to be consistent with City positions and may be viewed on the City of San Antonio's Human Resources Department website, http://agency.governmentjobs.com/sanantoniotx/default.cfm?action=agencyspecs. The Agency is responsible for any costs incurred to ensure the employee is fully qualified.

3.5 City reserves the right to perform additional background investigations on individuals provided by Agency in order to confirm clearance, if required for the position being filled.

3.6 City shall provide the work-station, identification cards/badges, telephone, or other tools that will be required for each position that is requested.

3.7 Agency shall ensure that personnel assigned to the City wear appropriate work attire and present a professional appearance. Agency shall guarantee that such personnel have completed all appropriate training required for the particular position requested.

3.8 Agency shall have the temporary employee report to the designated City employee as directed by the individual department requesting the services upon commencement of each assignment.

3.9 Within 8 hours of the work assignment, if the City is not satisfied for any reason with the quality or quantity of the expected work of the temporary employee, City will inform Agency and City shall not be billed for unsatisfactory services. City will notify Agency when temporary personnel are no longer needed or do not perform to the expected standards. Agency will make contact with the temporary employee and coordinate their departure and replacement (if required by City).

3.10 Agency shall provide City with electronic time sheets that include the temporary employee's name, Agency's identification number for employee if applicable, locations in which services were performed, hours worked, hourly rate, mark up percentage, and total pay. Agency shall submit time sheets weekly to the temporary employee's designated supervisor at City for signature and approval. Timesheets will be submitted electronically, using Excel or Word format, or an online application as provided by Agency, provided it is in a format accessible by City without additional cost. A hard copy of the approved time sheets shall be attached and submitted with Agency's related invoice. The using department and agency will coordinate and determine the best method for submitting time sheets to agency before temporary employee begins work.

3.11 Hourly rates may vary based on the qualifications of the particular temporary employee and the requesting department's budget. Parties shall document the agreed upon hourly rate in writing at the time of selection of the temporary employee, if it is different than the

budgeted rate originally submitted to Agency, setting forth the hourly rate to be paid to the temporary employee separately from the hourly rate that includes the Mark-Up Percentage. Agency will be responsible for paying all salary and personnel costs owed to the temporary employee, and for complying with all state and federal taxation requirements related to the temporary employee's income.

3.12 Agency shall be responsible for the repair or replacement cost of any damage to City property caused by the misuse or negligence of Agency's assigned employees.

3.13 Temporary personnel assigned to City will not work under this agreement on City holidays and no payment will be made by City to Agency for such holidays, unless specifically approved by the City Supervisor.

3.14 Agency shall not be entitled to any employment agency fees for temporary employees that submit a job application to City and secure permanent employment, other than fees owed for the time period Agency provided the employee to City as a temporary employee.

3.15 Agency shall comply with all state and federal requirements regarding verification of employment eligibility. Agency shall maintain this verification for a period of four years after termination or expiration of the contract or any period set by state or federal law, whichever is greater.

3.16 Agency shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of these services, including, if applicable, workers' compensation laws, compensation statutes and regulations, and licensing laws and regulations. When required, Agency shall furnish City with satisfactory proof of its compliance.

3.17 Agency shall be responsible and liable for the safety, injury and health of its employees and contractors while they are performing work for City.

3.18 Agency and temporary employees assigned to City shall comply with all City's Administrative Directives and assigned department's policies and guidelines, as applicable. Agency shall be provided with a copy of all applicable City Administrative Directives, and shall be required to sign an acknowledgement form indicating receipt. Agency shall be responsible for providing copies of these departmental policies to the assigned temporary employee and obtaining a signed acknowledgment of receipt. Agency acknowledgments of receipt shall be returned to City to the person identified in Article VIII. Temporary employee acknowledgments shall be returned to the temporary employee's designated supervisor at City.

3.19 Agency shall conduct onsite visits on a monthly basis with each of the using departments where temporary staff is working. These visits may be unannounced to the employee but MUST be coordinated at least 24 working hours in advance with the City supervisor.

3.20 Any benefits provided to temporary employees, including those under the Affordable Care Act, shall be Agency's responsibility and at Agency's sole cost.

3.21 Security Addendum for Criminal Justice Information Services (CJIS). Agency may be required to provide temporary employees to City departments that perform criminal justice services. Criminal Justice Agencies, such as the San Antonio Police Department, are required to comply with the security requirements managed by the Federal Bureau of Investigations (FBI) and state agencies, such as the Texas Department of Public Safety. The federal Criminal Justice Information Services Security Policy (Policy) applies to every individual, contractor, private entity, noncriminal justice agency representative, or member of a criminal justice entity with access to, or who operate in support of, criminal justice services and information. Agency shall comply with the Policy and shall execute the CJIS Security Addendum attached to this agreement. Temporary employees who are subject to the Policy will be required to sign a Contractor Employee Certification and be finger printed. All costs associated with compliance with the CJIS Policy shall be borne by Agency.

3.22 Screening, training, supervision, evaluation, and discipline of temporary employees are responsibilities of Agency. Temporary employees shall not be employees of City and shall not have any expectation of employment by City.

3.23 In order to conduct periodic contract compliance reviews, and to the extent permitted by law, City may request or review I-9s, drug test results, background check results, and proof of verification of minimum qualifications to include education and experience. Agency shall provide copies of the requested information, or access thereto, and shall obtain authorization from the employee at time of hire, to the extent required.

3.24 Agency will provide Human Resources representative monthly reports in Excel format with detailed usage to include, but not limited to department, position title, exempt status, hourly rate, mark up, hours worked, dates worked and billing amount. City may request additional reports as needed for contract compliance review.

IV. COMPENSATION TO AGENCY

4.1 In consideration of Agency's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Agency its Mark-Up Percentage, as follows:

Mark-Up Percentage for Non-exempt employees: 35%

Mark-Up Percentage for Exempt employees: 28%

The Mark-Up Percentages shall remain fixed for the entire term of the awarded contract, and any renewals.

4.1.1 The utilizing City Department shall pay Agency the agreed upon hourly rate for the temporary employee selected for the actual hours worked, plus the Mark-Up Percentage. The utilizing City Department will review and if correct billing is received, shall authorize payment. All payments will be mailed directly from the City's Finance Accounts Payable Office.

4.1.2 If overtime is required or applicable to any temporary employee, City shall pay Agency the overtime rate at one and one-half (1½) times the hourly rate for any hours worked in excess of forty (40) hours per week. However, the Mark-Up Percentage paid shall be based solely on the regular hourly rate, not the overtime rate.

4.1.3 Federal standards shall determine which category (exempt or non-exempt) applies to each temporary employee assigned to City. To the extent possible, the determination shall be based on the current City's job descriptions that are located on the City of San Antonio's Human Resources Department website, http://agency.governmentjobs.com/sanantoniotx/default.cfm?action=agencyspecs. The determination shall be consistent with the FLSA requirements.

4.2 Invoices shall be submitted weekly to the City of San Antonio, Attn: Accounts Payable, P.O. box 839976, San Antonio, Texas 78283-3976, with copies to the point of contact at the department for which the temporary employee is working and the central Human Resources representative at: City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966. Agency shall submit separate invoices for each temporary employee. Invoices must be in a form and content acceptable to City and shall include:

(a) the name of the City department using the particular temporary employee
(b) the department's point of contact for the particular temporary employee
(c) the name of the temporary employee
(d) the hours worked by date
(e) the total hours worked for the invoiced pay period
(f) the rate of pay, broken down by regular rate and overtime rate
(g) the total owed attributable to the hours worked by the temporary employee, excluding the Mark-Up Percentage
(h) the Mark-Up Percentage applicable
(i) the total owed, including the Mark-Up Percentage [(g) + (h)]

4.3 No additional fees or expenses of Agency shall be charged by Agency nor be payable by City. The parties hereby agree that all compensable expenses of Agency have been provided for in the total payment to Agency as specified in section 4.1 above. Total payments to Agency cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Agency following written approval of the final work products and services by Director. City shall not be obligated or liable under

this Agreement to any party, other than Agency, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Agency or its temporary employee pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Agency.

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

VI. RECORDS RETENTION

6.1 Agency and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Agency shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Agency shall retain the records until the resolution of such litigation or other such questions. Agency acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Agency to return the documents to City at Agency's expense prior to or at the conclusion of the retention period. In such event, Agency may retain a copy of the documents.

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

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

7.3.2 Three or more failures within a three month period to timely provide candidates for City's requested positions; or

7.3.3 Three or more occasions within a three month period during which City has had to terminate the temporary employees supplied by agency for unsatisfactory performance, lack of required qualifications, or similar reasons.

7.4 Defaults with Opportunity for Cure. Should Agency default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Agency shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Agency fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another agency to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new agency against Agency's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Attachment B - Small Business Economic Development Advocacy Program Requirements.
7.4.2 Bankruptcy or selling substantially all of company's assets
7.4.3 Failing to perform or failing to comply with any covenant herein required
7.4.4 Performing unsatisfactorily

7.5 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Agency shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Agency, or provided to Agency, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Agency in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by City and shall be completed at Agency's sole cost and expense. Payment of compensation due or to become due to Agency is conditioned upon delivery of all such documents, if requested.

7.7 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Agency shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Agency to submit its claims within said 45 calendar days shall negate any liability on the part of City and constitute a **Waiver** by Agency of any and all right or claims to collect moneys that Agency may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Agency shall cease all operations of work being performed by Agency or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Agency for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to: City of San Antonio
Attn: Krystal Strong, Senior Human Resources Administrator
Human Resources Department
P.O. Box 839966, San Antonio, Texas 78283-3966

If intended for Agency, to: Stability Staffing and Consulting, LLC
Attn: Jennifer Delgado, President/CEO
10823 Red Musket Trail, San Antonio, Texas 78245

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Agency shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Purchasing and General Services Department, which shall be clearly labeled "*Temporary Personnel Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Purchasing Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

10.3 An Agency's financial integrity is of interest to the City; therefore, subject to Agency's right to maintain reasonable deductibles in such amounts as are approved by the City, Agency shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Agency's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its

a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	equivalent in Umbrella or Excess Liability Coverage f. $100,000

10.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto 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). Agency 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. Agency shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Purchasing and General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

10.5 Agency 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 polices;

- 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;

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

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

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

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

10.9 It is agreed that Agency'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.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.11 Agency and any subcontractors are responsible for all damage to their own equipment and/or property

XI. INDEMNIFICATION

11.1 **AGENCY 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 AGENCY'S activities under this Agreement, including any acts or omissions of AGENCY, any agent, officer, director, representative, employee, consultant or subcontractor of AGENCY, 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, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT AGENCY 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.**

11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or

entity. AGENCY shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or AGENCY known to AGENCY related to or arising out of AGENCY's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at AGENCY's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving AGENCY of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by AGENCY in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. AGENCY shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If AGENCY fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and AGENCY shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Agency shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Agency. Agency, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Agency intends to use the following subcontractors in the performance of this Agreement: Alamo HR, LLC. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Agency. City shall in no event be obligated to any third party, including any subcontractor of Agency, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.

12.4 Except as otherwise stated herein, Agency may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director. As a condition of such consent, if such consent is granted, Agency shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Agency, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Agency assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Agency shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Agency shall in no event release Agency from any obligation under the terms of this Agreement, nor shall it relieve or release Agency from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Agency covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Agency shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Agency, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Agency. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Agency under this Agreement and that Agency has no authority to bind the City.

Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by City, what instruction or direction is provided by City, Agency, and those persons designated by it to provide services shall not be deemed employees of City, and shall not be entitled to wages or benefits from City, other than as specified in Article IV.

XIV. RESERVED

XV. CONFLICT OF INTEREST

15.1 Agency acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or

any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party 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.

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

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Agency. Director shall have authority to execute amendments on behalf of the City without further action by the City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

19.1 Agency shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

19.2 Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

Attachment A – Criminal Justice Information Services Addendum
Attachment B – Small Business Economic Development Advocacy Program Requirements
Attachment C – Agency's Utilization Plan

XXVI. ENTIRE AGREEMENT

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

XXVII. PROHIBITED CONTRIBUTIONS

27.1 Agency acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile"

discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Agency understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

27.2 Agency acknowledges that the City has identified this Agreement as high profile.

27.3 Agency warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

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

CITY OF SAN ANTONIO	**STABILITY STAFFING AND CONSULTING, LLC.**
(Signature)	*(Signature)*
Printed Name:	Printed Name: Jennifer Delgado
Title:	Title: President/CEO
Date:	Date: 10/13/2015

Approved as to Form:

Assistant City Attorney

Texas Signatory Page

The undersigned parties agree that the *Security Addendum* is now a part of the contract between the entities. The parties agree to abide by all requirements of the *Security Addendum* and the *CJIS Security Policy*, and it shall remain in force for the term of the contract. Any violation of this addendum constitutes a breach of the contract.

To the extent there is a conflict between a confidentiality clause in the underlying contract and the *Security Addendum* and/or the *CJIS Security Policy*, the *Security Addendum* and the *CJIS Security Policy* shall govern any information covered by the *Security Addendum* and/or the *CJIS Security Policy.*

(To be signed and dated by the vendor and law enforcement agency representative(s) who signed the original contract, or at least who have authority to bind each entity.)

Printed Name of Agency Representative

Signature of Agency Representative | Title

Agency Name and ORI | Date

Jennifer Delgado
Printed Name of Vendor (Contractor) Representative

Signature of Vendor (Contractor) Representative | President / CEO
Title

Stability Staffing and Consulting | 10/13/2015
Vendor Organization Name | Date

ATTACHMENT B

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM REQUIREMENTS

A. Solicitation Response and Contract Requirements and Commitment

Consultant commits to comply with these requirements.

B. SBEDA Program

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

C. Definitions

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

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Consultants and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

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

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

Good Faith Efforts – documentation of the Consultant's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Consultant's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Consultant's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Consultant; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Consultant's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria:

(1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

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

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

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

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

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

Payment – dollars actually paid to Consultant's and/or subcontractors and vendors for CITY contracted goods and/or services.

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

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

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

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

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

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

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

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

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

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small

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

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

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

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

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

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

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

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

D. SBEDA Program Compliance – General Provisions

As Consultant acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of

Consultant's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

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

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

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

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

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

determination of litigation, whichever is later.

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

8. CONSULTANT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONSULTANT and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONSULTANT has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

MWBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least ***twenty percent (20%)*** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a

waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontracting Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 20% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of March 2015, African-American owned firms represent approximately 2.49% of available subcontractors, Hispanic-American firms represent approximately 7.88%, Asian-American firms represent approximately 0.76%, Native American firms represent approximately 0.08%, and Women-owned firms represent approximately 4.68% of available professional services subcontractors.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

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

CONSULTANT until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

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

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

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

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

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

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

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

1. Suspension of contract;

2. Withholding of funds;

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

4. Refusal to accept a response or proposal; and

5. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

Attachment C

Agency's Utilization Plan

CITY OF SAN ANTONIO
ECONOMIC DEVELOPMENT DEPARTMENT

CITY OF SAN ANTONIO
SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SOLICITATION NAME: ***FY 2015 TOC for Traffic Signal Equipment Modifications***

RESPONDENT NAME: STABILITY STAFFING AND CONSULTING,LLC

SOLICITATION API: ***None***

API REQUIREMENTS: ***None***

Enter Respondent's (Prime) proposed contract participation level. Leave blank for revenue generating contracts.

	PARTICIPATION DOLLAR AMOUNT	% LEVEL OF PARTICIPATION	CERTIFICATION TYPE AND NUMBER	TYPE OF WORK TO BE PERFORMED (BY NIGP CODE)
Prime: STABILITY STAFFING AND CONSULTI	$	80 %	ESBE, HABE, MBE, SBE, WBE	541611, 561311, 561312, 561320
SAePS Vendor #: 10018387			SCTRCA #: 214043635	

List ALL subcontractors/suppliers that will be utilized for the entire contract period, excluding possible extensions, renewals and/or alternates. Use additional pages if necessary.

Sub:ALAMO HR	$	20 %	ESBE, HABE, MBE, SBE, WBE	541612, 561311, 561312, 561320
SAePS Vendor #: 10033506			SCTRCA #: 213069475	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	

*** Prime respondent and all subcontractors/suppliers must be registered in the City of San Antonio Electronic Procurement System (SAePS). To learn more about how to register, please call (210) 207-0118 or visit http://www.sanantonio.gov/purchasing/saeps.aspx.*

Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	

A.Total Prime Participation:	$	80 %	*A. Total base bid amount to be kept by prime.*
B.Total Sub Participation:	$	20 %	*B. Total amount prime will pay to certified and non-certified subcontractors/suppliers*
C.Total Certified Sub Participation:	$	%	*C. Total amount prime will pay to certified subcontractors/suppliers per the eligibility requirements stated above*
D.Total Prime & Sub Participation*:	$	100 %	*D. Total prime and subcontractor(s)/supplier(s) participation must equal your base bid amount (A+B)*

If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

I HEREBY AFFIRM THAT I POSSESS DOCUMENTATION FROM ALL PROPOSED SUBCONTRACTORS/SUPPLIERS CONFIRMING THEIR INTENT TO PERFORM THE SCOPE OF WORK FOR THE PRICE INDICATED ABOVE. I FURTHER AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Print Name: Jennifer Delgado **Sign:** **Title:** President/ CEO

Date: 5/20/2015

****

FOR CITY USE

Action Taken: Approved_____ **Denied**_____ _____

ASSISTANT DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

PROFESSIONAL SERVICES AGREEMENT
FOR
TEMPORARY PERSONNEL SERVICES

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, or her designee, pursuant to Ordinance No. 2015-__-__-____ and Labor on Demand, Inc., by and through Lucinda Martinez-Leal, its President ("Consultant" or "Agency"), both of which may be referred to herein collectively as the "Parties".

Whereas, City issued a request for proposals ("RFP") for temporary employment agencies to provide administrative, clerical, and other business related positions that would be considered both exempt and non-exempt under the Fair Labor Standards Act (FLSA); and

Whereas, the length of any individual assignment would vary and be based on the needs of the particular City department and/or office requesting same; and

Whereas, Agency submitted a response to said RFP and is willing to provide the services described herein, with the understanding that this will not be an exclusive contract;

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

I. DEFINITIONS

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

1.1 *Agency* is defined in the preamble of this Agreement and includes its successors.

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

1.3 *Consultant* is defined in the preamble of this Agreement and includes its successors.

1.4 *Director* shall mean the acting director of City's Human Resources Department.

1.5 *Mark-Up Percentage* – the fee charged by Agency to City for its services hereunder. The Mark-Up Percentage is a percentage of the regular hourly rate (not the overtime rate) for the assigned temporary employee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 20, 2015 and terminate on December 20, 2018.

2.2 This Agreement may be renewed by City on the same terms and conditions for two additional one year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council ("City Council"). However, all renewals are subject to and contingent upon appropriation of funds therefore by the City Council

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Agency agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 All work performed by Agency hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Agency, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Agency's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 When it is determined by City that temporary personnel services are required, Agency will be contacted via telephone or email with a position description for a temporary employee, the hourly rate that has been budgeted for that particular position, location of job site and the estimated duration period of the assignment. Agency shall provide a list of qualified candidates along with their résumés, curriculum vitae, reference information or other qualifications based information as requested by City for City to review within 3 calendar days from City's request at the latest. If City has selected an individual, Agency shall fill the request within a reasonable timeframe depending on the urgency of the services needed, on average within forty-eight (48) hours. City shall have the discretion to reject all possible candidates and secure the position from other sources if Agency's candidates do not meet City requirements, as solely determined by City. Parties agree that this is not an exclusive contract.

3.4 Agency shall be responsible for ensuring that each employee sent to work at the City meets the minimum qualifications of the position, has tested negative for controlled substance(s), using a 10 panel drug screening urine test after a conditional acceptance for placement with City, and has successfully undergone a background check for criminal conviction(s), evaluated based level of offense, date of offense and relevance to the position being filled, as recommended by EEOC guidelines. Minimum education and experience qualifications are to be consistent with City positions and may be viewed on the City of San Antonio's Human Resources Department website, http://agency.governmentjobs.com/sanantoniotx/default.cfm?action=agencyspecs. The Agency is responsible for any costs incurred to ensure the employee is fully qualified.

3.5 City reserves the right to perform additional background investigations on individuals provided by Agency in order to confirm clearance, if required for the position being filled.

3.6 City shall provide the work-station, identification cards/badges, telephone, or other tools that will be required for each position that is requested.

3.7 Agency shall ensure that personnel assigned to the City wear appropriate work attire and present a professional appearance. Agency shall guarantee that such personnel have completed all appropriate training required for the particular position requested.

3.8 Agency shall have the temporary employee report to the designated City employee as directed by the individual department requesting the services upon commencement of each assignment.

3.9 Within 8 hours of the work assignment, if the City is not satisfied for any reason with the quality or quantity of the expected work of the temporary employee, City will inform Agency and City shall not be billed for unsatisfactory services. City will notify Agency when temporary personnel are no longer needed or do not perform to the expected standards. Agency will make contact with the temporary employee and coordinate their departure and replacement (if required by City).

3.10 Agency shall provide City with electronic time sheets that include the temporary employee's name, Agency's identification number for employee if applicable, locations in which services were performed, hours worked, hourly rate, mark up percentage, and total pay. Agency shall submit time sheets weekly to the temporary employee's designated supervisor at City for signature and approval. Timesheets will be submitted electronically, using Excel or Word format, or an online application as provided by Agency, provided it is in a format accessible by City without additional cost. A hard copy of the approved time sheets shall be attached and submitted with Agency's related invoice. The using department and agency will coordinate and determine the best method for submitting time sheets to agency before temporary employee begins work.

3.11 Hourly rates may vary based on the qualifications of the particular temporary employee and the requesting department's budget. Parties shall document the agreed upon hourly rate in writing at the time of selection of the temporary employee, if it is different than the

budgeted rate originally submitted to Agency, setting forth the hourly rate to be paid to the temporary employee separately from the hourly rate that includes the Mark-Up Percentage. Agency will be responsible for paying all salary and personnel costs owed to the temporary employee, and for complying with all state and federal taxation requirements related to the temporary employee's income.

3.12 Agency shall be responsible for the repair or replacement cost of any damage to City property caused by the misuse or negligence of Agency's assigned employees.

3.13 Temporary personnel assigned to City will not work under this agreement on City holidays and no payment will be made by City to Agency for such holidays, unless specifically approved by the City Supervisor.

3.14 Agency shall not be entitled to any employment agency fees for temporary employees that submit a job application to City and secure permanent employment, other than fees owed for the time period Agency provided the employee to City as a temporary employee.

3.15 Agency shall comply with all state and federal requirements regarding verification of employment eligibility. Agency shall maintain this verification for a period of four years after termination or expiration of the contract or any period set by state or federal law, whichever is greater.

3.16 Agency shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of these services, including, if applicable, workers' compensation laws, compensation statutes and regulations, and licensing laws and regulations. When required, Agency shall furnish City with satisfactory proof of its compliance.

3.17 Agency shall be responsible and liable for the safety, injury and health of its employees and contractors while they are performing work for City.

3.18 Agency and temporary employees assigned to City shall comply with all City's Administrative Directives and assigned department's policies and guidelines, as applicable. Agency shall be provided with a copy of all applicable City Administrative Directives, and shall be required to sign an acknowledgement form indicating receipt. Agency shall be responsible for providing copies of these departmental policies to the assigned temporary employee and obtaining a signed acknowledgment of receipt. Agency acknowledgments of receipt shall be returned to City to the person identified in Article VIII. Temporary employee acknowledgments shall be returned to the temporary employee's designated supervisor at City.

3.19 Agency shall conduct onsite visits on a monthly basis with each of the using departments where temporary staff is working. These visits may be unannounced to the employee but MUST be coordinated at least 24 working hours in advance with the City supervisor.

3.20 Any benefits provided to temporary employees, including those under the Affordable Care Act, shall be Agency's responsibility and at Agency's sole cost.

3.21 Security Addendum for Criminal Justice Information Services (CJIS). Agency may be required to provide temporary employees to City departments that perform criminal justice services. Criminal Justice Agencies, such as the San Antonio Police Department, are required to comply with the security requirements managed by the Federal Bureau of Investigations (FBI) and state agencies, such as the Texas Department of Public Safety. The federal Criminal Justice Information Services Security Policy (Policy) applies to every individual, contractor, private entity, noncriminal justice agency representative, or member of a criminal justice entity with access to, or who operate in support of, criminal justice services and information. Agency shall comply with the Policy and shall execute the CJIS Security Addendum attached to this agreement. Temporary employees who are subject to the Policy will be required to sign a Contractor Employee Certification and be finger printed. All costs associated with compliance with the CJIS Policy shall be borne by Agency.

3.22 Screening, training, supervision, evaluation, and discipline of temporary employees are responsibilities of Agency. Temporary employees shall not be employees of City and shall not have any expectation of employment by City.

3.23 In order to conduct periodic contract compliance reviews, and to the extent permitted by law, City may request or review I-9s, drug test results, background check results, and proof of verification of minimum qualifications to include education and experience. Agency shall provide copies of the requested information, or access thereto, and shall obtain authorization from the employee at time of hire, to the extent required.

3.24 Agency will provide Human Resources representative monthly reports in Excel format with detailed usage to include, but not limited to department, position title, exempt status, hourly rate, mark up, hours worked, dates worked and billing amount. City may request additional reports as needed for contract compliance review.

IV. COMPENSATION TO AGENCY

4.1 In consideration of Agency's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Agency its Mark-Up Percentage, as follows:

Mark-Up Percentage for Non-exempt employees: 34%

Mark-Up Percentage for Exempt employees: 34%

The Mark-Up Percentages shall remain fixed for the entire term of the awarded contract, and any renewals.

4.1.1 The utilizing City Department shall pay Agency the agreed upon hourly rate for the temporary employee selected for the actual hours worked, plus the Mark-Up Percentage. The utilizing City Department will review and if correct billing is received, shall authorize payment. All payments will be mailed directly from the City's Finance Accounts Payable Office.

4.1.2 If overtime is required or applicable to any temporary employee, City shall pay Agency the overtime rate at one and one-half (1½) times the hourly rate for any hours worked in excess of forty (40) hours per week. However, the Mark-Up Percentage paid shall be based solely on the regular hourly rate, not the overtime rate.

4.1.3 Federal standards shall determine which category (exempt or non-exempt) applies to each temporary employee assigned to City. To the extent possible, the determination shall be based on the current City's job descriptions that are located on the City of San Antonio's Human Resources Department website, http://agency.governmentjobs.com/sanantoniotx/default.cfm?action=agencyspecs. The determination shall be consistent with the FLSA requirements.

4.2 Invoices shall be submitted weekly to the City of San Antonio, Attn: Accounts Payable, P.O. box 839976, San Antonio, Texas 78283-3976, with copies to the point of contact at the department for which the temporary employee is working and the central Human Resources representative at: City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966. Agency shall submit separate invoices for each temporary employee. Invoices must be in a form and content acceptable to City and shall include:

(a) the name of the City department using the particular temporary employee
(b) the department's point of contact for the particular temporary employee
(c) the name of the temporary employee
(d) the hours worked by date
(e) the total hours worked for the invoiced pay period
(f) the rate of pay, broken down by regular rate and overtime rate
(g) the total owed attributable to the hours worked by the temporary employee, excluding the Mark-Up Percentage
(h) the Mark-Up Percentage applicable
(i) the total owed, including the Mark-Up Percentage [(g) + (h)]

4.3 No additional fees or expenses of Agency shall be charged by Agency nor be payable by City. The parties hereby agree that all compensable expenses of Agency have been provided for in the total payment to Agency as specified in section 4.1 above. Total payments to Agency cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Agency following written approval of the final work products and services by Director. City shall not be obligated or liable under

this Agreement to any party, other than Agency, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Agency or its temporary employee pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Agency.

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

VI. RECORDS RETENTION

6.1 Agency and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Agency shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Agency shall retain the records until the resolution of such litigation or other such questions. Agency acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Agency to return the documents to City at Agency's expense prior to or at the conclusion of the retention period. In such event, Agency may retain a copy of the documents.

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

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

7.3.2 Three or more failures within a three month period to timely provide candidates for City's requested positions; or

7.3.3 Three or more occasions within a three month period during which City has had to terminate the temporary employees supplied by agency for unsatisfactory performance, lack of required qualifications, or similar reasons.

7.4 Defaults with Opportunity for Cure. Should Agency default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Agency shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Agency fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another agency to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new agency against Agency's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Attachment B - Small Business Economic Development Advocacy Program Requirements.
7.4.2 Bankruptcy or selling substantially all of company's assets
7.4.3 Failing to perform or failing to comply with any covenant herein required
7.4.4 Performing unsatisfactorily

7.5 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Agency shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Agency, or provided to Agency, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Agency in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by City and shall be completed at Agency's sole cost and expense. Payment of compensation due or to become due to Agency is conditioned upon delivery of all such documents, if requested.

7.7 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Agency shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Agency to submit its claims within said 45 calendar days shall negate any liability on the part of City and constitute a **Waiver** by Agency of any and all right or claims to collect moneys that Agency may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Agency shall cease all operations of work being performed by Agency or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Agency for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to: City of San Antonio
Attn: Krystal Strong, Senior Human Resources Administrator
Human Resources Department
P.O. Box 839966, San Antonio, Texas 78283-3966

If intended for Agency, to: Labor on Demand, Inc.
Attn: Lucinda Martinez-Leal, President
4241 East Piedras #150, San Antonio, Texas 78228

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Agency shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Purchasing and General Services Department, which shall be clearly labeled "*Temporary Personnel Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Purchasing Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

10.3 An Agency's financial integrity is of interest to the City; therefore, subject to Agency's right to maintain reasonable deductibles in such amounts as are approved by the City, Agency shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Agency's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for	For Bodily Injury and Property Damage of $1,000,000 per occurrence;

the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000

10.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto 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). Agency 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. Agency shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Purchasing and General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

10.5 Agency 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 polices;

- 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;

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

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

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

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

10.9 It is agreed that Agency'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.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.11 Agency and any subcontractors are responsible for all damage to their own equipment and/or property

XI. INDEMNIFICATION

11.1 **AGENCY 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 AGENCY'S activities under this Agreement, including any acts or omissions of AGENCY, any agent, officer, director, representative, employee, consultant or subcontractor of AGENCY, 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, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT AGENCY 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.**

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

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by AGENCY in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. AGENCY shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If AGENCY fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and AGENCY shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Agency shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Agency. Agency, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Agency intends to use the following subcontractors in the performance of this Agreement: Genesis Professional Solutions. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Agency. City shall in no event be obligated to any third party, including any subcontractor of Agency, for performance of

services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.

12.4 Except as otherwise stated herein, Agency may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director. As a condition of such consent, if such consent is granted, Agency shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Agency, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Agency assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Agency shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Agency shall in no event release Agency from any obligation under the terms of this Agreement, nor shall it relieve or release Agency from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Agency covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Agency shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Agency, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Agency. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Agency under this Agreement and that Agency has no authority to bind the City.

Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by City, what instruction or direction is provided by City, Agency, and those persons designated by it to provide services shall not be deemed employees of City, and shall not be entitled to wages or benefits from City, other than as specified in Article IV.

XIV. RESERVED

XV. CONFLICT OF INTEREST

15.1 Agency acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party 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.

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

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Agency. Director shall have authority to execute amendments on behalf of the City without further action by the City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

19.1 Agency shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

19.2 Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a

result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

Attachment A – Criminal Justice Information Services Addendum
Attachment B – Small Business Economic Development Advocacy Program Requirements
Attachment C – Agency's Utilization Plan

XXVI. ENTIRE AGREEMENT

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

XXVII. PROHIBITED CONTRIBUTIONS

27.1 Agency acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Agency understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

27.2 Agency acknowledges that the City has identified this Agreement as high profile.

27.3 Agency warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

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

CITY OF SAN ANTONIO	**LABOR ON DEMAND, INC.**
(Signature)	*(Signature)*
Printed Name:	Printed Name: Lucinda Martinez-Leal
Title:	Title: President
Date:	Date: June 14, 2015

Approved as to Form:

Assistant City Attorney

Attachment A

Criminal Justice Information Services Addendum

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1)under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1.00 Definitions

1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2.00 Responsibilities of the Contracting Government Agency.

2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes.

3.00 Responsibilities of the Contractor.

3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4.00 Security Violations.

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

a. Investigate or decline to investigate any report of unauthorized use;

b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CGA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM
CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Signature of Contractor Employee — Date

Printed or Typed Contractor Employee Name

Sex: ____ Race: _____ DOB: _____ State/ID or DL: _____

Signature of Contractor Representative — Oct. 15, 2015 Date

Lucinda MacIver-Leal
Printed or Typed Name of Contractor Representative

Organization Name and Representative's Title

Texas Signatory Page

The undersigned parties agree that the *Security Addendum* is now a part of the contract between the entities. The parties agree to abide by all requirements of the *Security Addendum* and the *CJIS Security Policy*, and it shall remain in force for the term of the contract. Any violation of this addendum constitutes a breach of the contract.

To the extent there is a conflict between a confidentiality clause in the underlying contract and the *Security Addendum* and/or the *CJIS Security Policy*, the *Security Addendum* and the *CJIS Security Policy* shall govern any information covered by the *Security Addendum* and/or the *CJIS Security Policy*.

(To be signed and dated by the vendor and law enforcement agency representative(s) who signed the original contract, or at least who have authority to bind each entity.)

Printed Name of Agency Representative

Signature of Agency Representative | Title

Agency Name and ORI | Date

Lucinda Martinez-Leal
Printed Name of Vendor (Contractor) Representative

Lucinda Martinez-Leal | President
Signature of Vendor (Contractor) Representative | Title

Labor Law Department, Inc. | October 14, 2015
Vendor Organization Name | Date

ATTACHMENT B

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM REQUIREMENTS

A. Solicitation Response and Contract Requirements and Commitment

Consultant commits to comply with these requirements.

B. SBEDA Program

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

C. Definitions

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

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Consultants and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

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

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

Good Faith Efforts – documentation of the Consultant's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Consultant's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Consultant's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Consultant; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Consultant's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria:

(1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

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

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

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

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

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

Payment – dollars actually paid to Consultant's and/or subcontractors and vendors for CITY contracted goods and/or services.

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

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

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

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

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

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

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

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

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

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small

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

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

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

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

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

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

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

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

D. SBEDA Program Compliance – General Provisions

As Consultant acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of

Consultant's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

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

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

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

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

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

determination of litigation, whichever is later.

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

8. CONSULTANT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONSULTANT and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONSULTANT has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

MWBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least ***twenty percent (20%)*** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a

waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontracting Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 20% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of March 2015, African-American owned firms represent approximately 2.49% of available subcontractors, Hispanic-American firms represent approximately 7.88%, Asian-American firms represent approximately 0.76%, Native American firms represent approximately 0.08%, and Women-owned firms represent approximately 4.68% of available professional services subcontractors.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

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

CONSULTANT until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

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

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

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

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

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

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

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

1. Suspension of contract;

2. Withholding of funds;

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

4. Refusal to accept a response or proposal; and

5. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

Attachment C

Agency's Utilization Plan

CITY OF SAN ANTONIO
ECONOMIC DEVELOPMENT DEPARTMENT

CITY OF SAN ANTONIO
SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SOLICITATION NAME: *Temporary Labor Personel Services*

RESPONDENT NAME: Labor On Demand Inc.

SOLICITATION API: ***Small Business Enterprise (SBE) Prime Contract AND Minority/Woman Business Enterprise (M/WBE) Prime Contract Programs AND Minority / Woman Business Enterprise (M/WBE) Subcontracting Program***

API REQUIREMENTS: Respondents must demonstrate commitment to satisfy a **twenty percent (20%) M/WBE subcontracting goal.** Pursuant to the SBEDA Ordinance, M/WBEs must also be certified as SBEs with the South Central Texas Regional Certification Agency (SCTRCA) and be headquartered or have a Significant Business Presence in the San Antonio Metropolitan Statistical Area to satisfy the above-stated goal. Self-performance by M/WBE prime respondents does not count towards this subcontracting goal. Commitment to meet subcontracting requirements must be demonstrated by writing the **company name, SAePS vendor number of each subcontractor/supplier, dollar value or percentage of participation on the contract, and type of work to be performed****. In the absence of a waiver granted by the Small Business Office, failure of a Respondent to commit to satisfying the M/WBE subcontracting goals shall render its response NON-RESPONSIVE. In addition, in order to receive the **ten (10)** evaluation preference points associated with the SBE Prime Contract Program and the **ten (10)** evaluation preference points associated with the M/WBE Prime Contract Program, S/M/WBE Prime Respondents must document on this form that at least 51% of this contract shall be self-performed or shall be subcontracted to other certified Small Business Enterprises with a Significant Business Presence within the San Antonio Metropolitan Statistical Area. For further clarification, please contact David Rodriguez at 210-207-0071.

Enter Respondent's (Prime) proposed contract participation level. Leave blank for revenue generating contracts.

	PARTICIPATION DOLLAR AMOUNT	% LEVEL OF PARTICIPATION	CERTIFICATION TYPE AND NUMBER	TYPE OF WORK TO BE PERFORMED (BY NIGP CODE)
Prime: Labor On Demand Inc.	$	%	WBE, HABE, MBE, SBE DBE, COSA Section 3	
SAePS Vendor #: V1040269		80%	SCTRCA #: 213100351 ~~212030351~~	962-69

List ALL subcontractors/suppliers that will be utilized for the entire contract period, excluding possible extensions, renewals and/or alternates. Use additional pages if necessary.

Sub: Genesis Professional Solutions	$	%	AABE, ESBE, MBE, WBE, SBE	
SAePS Vendor #: V1038050		20	SCTRCA #: 215052784	962-69
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	

*** Prime respondent and all subcontractors/suppliers must be registered in the City of San Antonio Electronic Procurement System (SAePS). To learn more about how to register, please call (210) 207-0118 or visit http://www.sanantonio.gov/purchasing/saeps.aspx.*

Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
A.Total Prime Participation:	$	80 %	*A. Total base bid amount to be kept by prime.*	
B.Total Sub Participation:	$	%	*B. Total amount prime will pay to certified and non-certified subcontractors/suppliers*	
C.Total Certified Sub Participation:	$	20 %	*C. Total amount prime will pay to certified subcontractors/suppliers per the eligibility requirements stated above*	
D.Total Prime & Sub Participation*:	$	100 %	*D. Total prime and subcontractor(s)/supplier(s) participation must equal your base bid amount (A+B)*	

If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

I HEREBY AFFIRM THAT I POSSESS DOCUMENTATION FROM ALL PROPOSED SUBCONTRACTORS/SUPPLIERS CONFIRMING THEIR INTENT TO PERFORM THE SCOPE OF WORK FOR THE PRICE INDICATED ABOVE. I FURTHER AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Print Name: Richard Tovar **Sign:** Richard Tovar **Title:** Marketing Director

Date: May 24, 2015

****

FOR CITY USE

Action Taken: **Approved**_____ **Denied**_____ _____

ASSISTANT DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

Version 09/04/13

PROFESSIONAL SERVICES AGREEMENT
FOR
TEMPORARY PERSONNEL SERVICES

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, or her designee, pursuant to Ordinance No. 2015-__-__-____ and Tri-Starr Personnel, LLC d/b/a Tri-Starr Group, by and through Pam Vaught, its Vice President and COO ("Consultant" or "Agency"), both of which may be referred to herein collectively as the "Parties".

Whereas, City issued a request for proposals ("RFP") for temporary employment agencies to provide administrative, clerical, and other business related positions that would be considered both exempt and non-exempt under the Fair Labor Standards Act (FLSA); and

Whereas, the length of any individual assignment would vary and be based on the needs of the particular City department and/or office requesting same; and

Whereas, Agency submitted a response to said RFP and is willing to provide the services described herein, with the understanding that this will not be an exclusive contract;

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

I. DEFINITIONS

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

1.1 *Agency* is defined in the preamble of this Agreement and includes its successors.

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

1.3 *Consultant* is defined in the preamble of this Agreement and includes its successors.

1.4 *Director* shall mean the acting director of City's Human Resources Department.

1.5 *Mark-Up Percentage* – the fee charged by Agency to City for its services hereunder. The Mark-Up Percentage is a percentage of the regular hourly rate (not the overtime rate) for the assigned temporary employee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on December 20, 2015 and terminate on December 20, 2018.

2.2 This Agreement may be renewed by City on the same terms and conditions for two additional one year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council ("City Council"). However, all renewals are subject to and contingent upon appropriation of funds therefore by the City Council

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Agency agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 All work performed by Agency hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Agency, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Agency's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 When it is determined by City that temporary personnel services are required, Agency will be contacted via telephone or email with a position description for a temporary employee, the hourly rate that has been budgeted for that particular position, location of job site and the estimated duration period of the assignment. Agency shall provide a list of qualified candidates along with their résumés, curriculum vitae, reference information or other qualifications based information as requested by City for City to review within 3 calendar days from City's request at the latest. If City has selected an individual, Agency shall fill the request within a reasonable timeframe depending on the urgency of the services needed, on average within forty-eight (48) hours. City shall have the discretion to reject all possible candidates and secure the position from other sources if Agency's candidates do not meet City requirements, as solely determined by City. Parties agree that this is not an exclusive contract.

3.4 Agency shall be responsible for ensuring that each employee sent to work at the City meets the minimum qualifications of the position, has tested negative for controlled substance(s), using a 10 panel drug screening urine test after a conditional acceptance for placement with City, and has successfully undergone a background check for criminal conviction(s), evaluated based level of offense, date of offense and relevance to the position being filled, as recommended by EEOC guidelines. Minimum education and experience qualifications are to be consistent with City positions and may be viewed on the City of San Antonio's Human Resources Department website, http://agency.governmentjobs.com/sanantoniotx/default.cfm?action=agencyspecs. The Agency is responsible for any costs incurred to ensure the employee is fully qualified.

3.5 City reserves the right to perform additional background investigations on individuals provided by Agency in order to confirm clearance, if required for the position being filled.

3.6 City shall provide the work-station, identification cards/badges, telephone, or other tools that will be required for each position that is requested.

3.7 Agency shall ensure that personnel assigned to the City wear appropriate work attire and present a professional appearance. Agency shall guarantee that such personnel have completed all appropriate training required for the particular position requested.

3.8 Agency shall have the temporary employee report to the designated City employee as directed by the individual department requesting the services upon commencement of each assignment.

3.9 Within 8 hours of the work assignment, if the City is not satisfied for any reason with the quality or quantity of the expected work of the temporary employee, City will inform Agency and City shall not be billed for unsatisfactory services. City will notify Agency when temporary personnel are no longer needed or do not perform to the expected standards. Agency will make contact with the temporary employee and coordinate their departure and replacement (if required by City).

3.10 Agency shall provide City with electronic time sheets that include the temporary employee's name, Agency's identification number for employee if applicable, locations in which services were performed, hours worked, hourly rate, mark up percentage, and total pay. Agency shall submit time sheets weekly to the temporary employee's designated supervisor at City for signature and approval. Timesheets will be submitted electronically, using Excel or Word format, or an online application as provided by Agency, provided it is in a format accessible by City without additional cost. A hard copy of the approved time sheets shall be attached and submitted with Agency's related invoice. The using department and agency will coordinate and determine the best method for submitting time sheets to agency before temporary employee begins work.

3.11 Hourly rates may vary based on the qualifications of the particular temporary employee and the requesting department's budget. Parties shall document the agreed upon hourly rate in writing at the time of selection of the temporary employee, if it is different than the

budgeted rate originally submitted to Agency, setting forth the hourly rate to be paid to the temporary employee separately from the hourly rate that includes the Mark-Up Percentage. Agency will be responsible for paying all salary and personnel costs owed to the temporary employee, and for complying with all state and federal taxation requirements related to the temporary employee's income.

3.12 Agency shall be responsible for the repair or replacement cost of any damage to City property caused by the misuse or negligence of Agency's assigned employees.

3.13 Temporary personnel assigned to City will not work under this agreement on City holidays and no payment will be made by City to Agency for such holidays, unless specifically approved by the City Supervisor.

3.14 Agency shall not be entitled to any employment agency fees for temporary employees that submit a job application to City and secure permanent employment, other than fees owed for the time period Agency provided the employee to City as a temporary employee.

3.15 Agency shall comply with all state and federal requirements regarding verification of employment eligibility. Agency shall maintain this verification for a period of four years after termination or expiration of the contract or any period set by state or federal law, whichever is greater.

3.16 Agency shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of these services, including, if applicable, workers' compensation laws, compensation statutes and regulations, and licensing laws and regulations. When required, Agency shall furnish City with satisfactory proof of its compliance.

3.17 Agency shall be responsible and liable for the safety, injury and health of its employees and contractors while they are performing work for City.

3.18 Agency and temporary employees assigned to City shall comply with all City's Administrative Directives and assigned department's policies and guidelines, as applicable. Agency shall be provided with a copy of all applicable City Administrative Directives, and shall be required to sign an acknowledgement form indicating receipt. Agency shall be responsible for providing copies of these departmental policies to the assigned temporary employee and obtaining a signed acknowledgment of receipt. Agency acknowledgments of receipt shall be returned to City to the person identified in Article VIII. Temporary employee acknowledgments shall be returned to the temporary employee's designated supervisor at City.

3.19 Agency shall conduct onsite visits on a monthly basis with each of the using departments where temporary staff is working. These visits may be unannounced to the employee but MUST be coordinated at least 24 working hours in advance with the City supervisor.

3.20 Any benefits provided to temporary employees, including those under the Affordable Care Act, shall be Agency's responsibility and at Agency's sole cost.

3.21 Security Addendum for Criminal Justice Information Services (CJIS). Agency may be required to provide temporary employees to City departments that perform criminal justice services. Criminal Justice Agencies, such as the San Antonio Police Department, are required to comply with the security requirements managed by the Federal Bureau of Investigations (FBI) and state agencies, such as the Texas Department of Public Safety. The federal Criminal Justice Information Services Security Policy (Policy) applies to every individual, contractor, private entity, noncriminal justice agency representative, or member of a criminal justice entity with access to, or who operate in support of, criminal justice services and information. Agency shall comply with the Policy and shall execute the CJIS Security Addendum attached to this agreement. Temporary employees who are subject to the Policy will be required to sign a Contractor Employee Certification and be finger printed. All costs associated with compliance with the CJIS Policy shall be borne by Agency.

3.22 Screening, training, supervision, evaluation, and discipline of temporary employees are responsibilities of Agency. Temporary employees shall not be employees of City and shall not have any expectation of employment by City.

3.23 In order to conduct periodic contract compliance reviews, and to the extent permitted by law, City may request or review I-9s, drug test results, background check results, and proof of verification of minimum qualifications to include education and experience. Agency shall provide copies of the requested information, or access thereto, and shall obtain authorization from the employee at time of hire, to the extent required.

3.24 Agency will provide Human Resources representative monthly reports in Excel format with detailed usage to include, but not limited to department, position title, exempt status, hourly rate, mark up, hours worked, dates worked and billing amount. City may request additional reports as needed for contract compliance review.

IV. COMPENSATION TO AGENCY

4.1 In consideration of Agency's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Agency its Mark-Up Percentage, as follows:

Mark-Up Percentage for both Non-exempt and Exempt employees:

Contract Years 1 and 2	39%
Contract Year 3	40%
Contract Year 4	41%
Contract Year 5	42%

The Mark-Up Percentages shown above shall remain fixed for the entire term of the awarded contract, and any renewals.

4.1.1 The utilizing City Department shall pay Agency the agreed upon hourly rate for the temporary employee selected for the actual hours worked, plus the Mark-Up Percentage. The utilizing City Department will review and if correct billing is received, shall authorize payment. All payments will be mailed directly from the City's Finance Accounts Payable Office.

4.1.2 If overtime is required or applicable to any temporary employee, City shall pay Agency the overtime rate at one and one-half (1½) times the hourly rate for any hours worked in excess of forty (40) hours per week. However, the Mark-Up Percentage paid shall be based solely on the regular hourly rate, not the overtime rate.

4.1.3 Federal standards shall determine which category (exempt or non-exempt) applies to each temporary employee assigned to City. To the extent possible, the determination shall be based on the current City's job descriptions that are located on the City of San Antonio's Human Resources Department website, http://agency.governmentjobs.com/sanantoniotx/default.cfm?action=agencyspecs. The determination shall be consistent with the FLSA requirements.

4.2 Invoices shall be submitted weekly to the City of San Antonio, Attn: Accounts Payable, P.O. box 839**976**, San Antonio, Texas 78283-39**76,** with copies to the point of contact at the department for which the temporary employee is working and the central Human Resources representative at: City of San Antonio, P.O. Box 8399**66**, San Antonio, Texas 78283-39**66**. Agency shall submit separate invoices for each temporary employee. Invoices must be in a form and content acceptable to City and shall include:

(a) the name of the City department using the particular temporary employee
(b) the department's point of contact for the particular temporary employee
(c) the name of the temporary employee
(d) the hours worked by date
(e) the total hours worked for the invoiced pay period
(f) the rate of pay, broken down by regular rate and overtime rate
(g) the total owed attributable to the hours worked by the temporary employee, excluding the Mark-Up Percentage
(h) the Mark-Up Percentage applicable
(i) the total owed, including the Mark-Up Percentage [(g) + (h)]

4.3 No additional fees or expenses of Agency shall be charged by Agency nor be payable by City. The parties hereby agree that all compensable expenses of Agency have been provided for in the total payment to Agency as specified in section 4.1 above. Total payments to Agency cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Agency following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Agency, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Agency or its temporary employee pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Agency.

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

VI. RECORDS RETENTION

6.1 Agency and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Agency shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Agency shall retain the records until the resolution of such litigation or other such questions. Agency acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Agency to return the documents to City at Agency's expense prior to or at the conclusion of the retention period. In such event, Agency may retain a copy of the documents.

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

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

7.3.2 Three or more failures within a three month period to timely provide candidates for City's requested positions; or

7.3.3 Three or more occasions within a three month period during which City has had to terminate the temporary employees supplied by agency for unsatisfactory performance, lack of required qualifications, or similar reasons.

7.4 Defaults with Opportunity for Cure. Should Agency default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Agency shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Agency fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another agency to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new agency against Agency's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Attachment B - Small Business Economic Development Advocacy Program Requirements.
7.4.2 Bankruptcy or selling substantially all of company's assets
7.4.3 Failing to perform or failing to comply with any covenant herein required
7.4.4 Performing unsatisfactorily

7.5 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is

interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Agency shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Agency, or provided to Agency, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Agency in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by City and shall be completed at Agency's sole cost and expense. Payment of compensation due or to become due to Agency is conditioned upon delivery of all such documents, if requested.

7.7 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Agency shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Agency to submit its claims within said 45 calendar days shall negate any liability on the part of City and constitute a **Waiver** by Agency of any and all right or claims to collect moneys that Agency may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Agency shall cease all operations of work being performed by Agency or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Agency for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to: City of San Antonio
Attn: Krystal Strong, Senior Human Resources Administrator

Human Resources Department
P.O. Box 839966, San Antonio, Texas 78283-3966

If intended for Agency, to: Tri-Starr Personnel, LLC d/b/a Tri-Starr Group
Attn: Pam Vaught, Vice President/COO
121 Interpark Blvd., Ste. 108, San Antonio, Texas 78216

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Agency shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Purchasing and General Services Department, which shall be clearly labeled "*Temporary Personnel Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Purchasing Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

10.3 An Agency's financial integrity is of interest to the City; therefore, subject to Agency's right to maintain reasonable deductibles in such amounts as are approved by the City, Agency shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Agency's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $500,000/$500,000/$500,000

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 f. Damage to property rented by you	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 f. $100,000

10.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto 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). Agency 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. Agency shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Purchasing and General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

10.5 Agency 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 polices;

- 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;

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

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

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

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

10.9 It is agreed that Agency'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.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.11 Agency and any subcontractors are responsible for all damage to their own equipment and/or property

XI. INDEMNIFICATION

11.1 **AGENCY 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 AGENCY'S activities under this Agreement, including any acts or omissions of AGENCY, any agent, officer, director, representative, employee, consultant or subcontractor of AGENCY, 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, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT AGENCY 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.**

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

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by AGENCY in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. AGENCY shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If AGENCY fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and AGENCY shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Agency shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Agency. Agency, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Agency intends to use the following subcontractors in the performance of this Agreement: Dilligas Corp. d/b/a U.S. Got People. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Agency. City shall in no event be obligated to any third party, including any subcontractor of Agency, for performance of

services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.

12.4 Except as otherwise stated herein, Agency may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director. As a condition of such consent, if such consent is granted, Agency shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Agency, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Agency assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Agency shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Agency shall in no event release Agency from any obligation under the terms of this Agreement, nor shall it relieve or release Agency from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Agency covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Agency shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Agency, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Agency. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Agency under this Agreement and that Agency has no authority to bind the City.

Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by City, what instruction or direction is provided by City, Agency, and those persons designated by it to provide services shall not be deemed employees of City, and shall not be entitled to wages or benefits from City, other than as specified in Article IV.

XIV. RESERVED

XV. CONFLICT OF INTEREST

15.1 Agency acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party 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.

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

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Agency. Director shall have authority to execute amendments on behalf of the City without further action by the City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

19.1 Agency shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

19.2 Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a

result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

Attachment A – Criminal Justice Information Services Addendum
Attachment B – Small Business Economic Development Advocacy Program Requirements
Attachment C – Agency's Utilization Plan

XXVI. ENTIRE AGREEMENT

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

XXVII. PROHIBITED CONTRIBUTIONS

27.1 Agency acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Agency understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

27.2 Agency acknowledges that the City has identified this Agreement as high profile.

27.3 Agency warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

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

CITY OF SAN ANTONIO	**TRI-STARR PERSONNEL, LLC D/B/A TRI-STARR GROUP**
_____ *(Signature)*	Pam Vaught *(Signature)*
Printed Name: _____	Printed Name: Pam Vaught
Title: _____	Title: Vice President/COO
Date: _____	Date: 10/13/15

Approved as to Form:

_____
Assistant City Attorney

Attachment A

Criminal Justice Information Services Addendum

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1)under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1.00 Definitions

1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2.00 Responsibilities of the Contracting Government Agency.

2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes.

3.00 Responsibilities of the Contractor.

3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4.00 Security Violations.

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

a. Investigate or decline to investigate any report of unauthorized use;

b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CGA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM
CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

_____ _____
Signature of Contractor Employee Date

_____
Printed or Typed Contractor Employee Name

Sex: ____ Race: _____ DOB: _____ State/ID or DL: _____

_____ _____
Signature of Contractor Representative Date

_____
Printed or Typed Name of Contractor Representative

_____
Organization Name and Representative's Title

Texas Signatory Page

The undersigned parties agree that the *Security Addendum* is now a part of the contract between the entities. The parties agree to abide by all requirements of the *Security Addendum* and the *CJIS Security Policy*, and it shall remain in force for the term of the contract. Any violation of this addendum constitutes a breach of the contract.

To the extent there is a conflict between a confidentiality clause in the underlying contract and the *Security Addendum* and/or the *CJIS Security Policy*, the *Security Addendum* and the *CJIS Security Policy* shall govern any information covered by the *Security Addendum* and/or the *CJIS Security Policy*.

(To be signed and dated by the vendor and law enforcement agency representative(s) who signed the original contract, or at least who have authority to bind each entity.)

Pam Vaught
Printed Name of Agency Representative

Pam Vaught — VP and COO
Signature of Agency Representative — Title

Tri-Starr Personnel LLC — 10/14/25
Agency Name and ORI — Date

Printed Name of Vendor (Contractor) Representative

Signature of Vendor (Contractor) Representative — Title

Vendor Organization Name — Date

ATTACHMENT B

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM REQUIREMENTS

A. Solicitation Response and Contract Requirements and Commitment

Consultant commits to comply with these requirements.

B. SBEDA Program

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

C. Definitions

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

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Consultants and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

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

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

Good Faith Efforts – documentation of the Consultant's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Consultant's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Consultant's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Consultant; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Consultant's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria:

(1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

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

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

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

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

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

Payment – dollars actually paid to Consultant's and/or subcontractors and vendors for CITY contracted goods and/or services.

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

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

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

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

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

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

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

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

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

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small

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

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

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

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

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

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

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

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

D. SBEDA Program Compliance – General Provisions

As Consultant acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of

Consultant's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

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

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

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

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

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

determination of litigation, whichever is later.

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

8. CONSULTANT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONSULTANT and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONSULTANT has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

MWBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least ***twenty percent (20%)*** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a

waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontracting Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 20% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of March 2015, African-American owned firms represent approximately 2.49% of available subcontractors, Hispanic-American firms represent approximately 7.88%, Asian-American firms represent approximately 0.76%, Native American firms represent approximately 0.08%, and Women-owned firms represent approximately 4.68% of available professional services subcontractors.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

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

CONSULTANT until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

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

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

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

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

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

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

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

1. Suspension of contract;

2. Withholding of funds;

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

4. Refusal to accept a response or proposal; and

5. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

Attachment C

Agency's Utilization Plan

CITY OF SAN ANTONIO
ECONOMIC DEVELOPMENT DEPARTMENT

CITY OF SAN ANTONIO
SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SOLICITATION NAME: ***Temporary Labor Personel Services***

RESPONDENT NAME: Tri-Starr Personnel dba Tri-Starr Group

SOLICITATION API: ***Small Business Enterprise (SBE) Prime Contract AND Minority/Woman Business Enterprise (M/WBE) Prime Contract Programs AND Minority / Woman Business Enterprise (M/WBE) Subcontracting Program***

API REQUIREMENTS: Respondents must demonstrate commitment to satisfy a **twenty percent (20%) M/WBE subcontracting goal.** Pursuant to the SBEDA Ordinance, M/WBEs must also be certified as SBEs with the South Central Texas Regional Certification Agency (SCTRCA) and be headquartered or have a Significant Business Presence in the San Antonio Metropolitan Statistical Area to satisfy the above-stated goal. Self-performance by M/WBE prime respondents does not count towards this subcontracting goal. Commitment to meet subcontracting requirements must be demonstrated by writing the **company name, SAePS vendor number of each subcontractor/supplier, dollar value or percentage of participation on the contract, and type of work to be performed****. In the absence of a waiver granted by the Small Business Office, failure of a Respondent to commit to satisfying the M/WBE subcontracting goals shall render its response NON-RESPONSIVE. In addition, in order to receive the **ten (10)** evaluation preference points associated with the SBE Prime Contract Program and the **ten (10)** evaluation preference points associated with the M/WBE Prime Contract Program, S/M/WBE Prime Respondents must document on this form that at least 51% of this contract shall be self-performed or shall be subcontracted to other certified Small Business Enterprises with a Significant Business Presence within the San Antonio Metropolitan Statistical Area. For further clarification, please contact David Rodriguez at 210-207-0071.

Enter Respondent's (Prime) proposed contract participation level. Leave blank for revenue generating contracts.

	PARTICIPATION DOLLAR AMOUNT	% LEVEL OF PARTICIPATION	CERTIFICATION TYPE AND NUMBER	TYPE OF WORK TO BE PERFORMED (BY NIGP CODE)
Prime: Tri-Starr Personnel, LLC DBA Tri-Starr G	$	80 %	SBE & WBE	96102,96130,96269
SAePS Vendor #: 1039875			SCTRCA #: 215058471	

List ALL subcontractors/suppliers that will be utilized for the entire contract period, excluding possible extensions, renewals and/or alternates. Use additional pages if necessary.

Sub:Dilligas Corp, DBA U.S. Got People	$	20 %	DIBE, HABE, MBE, SBE & VBE	96102,96130,96269
SAePS Vendor #: 10024489			SCTRCA #: 215059311	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub.	$	%		
SAePS Vendor #:			SCTRCA #:	

*** Prime respondent and all subcontractors/suppliers must be registered in the City of San Antonio Electronic Procurement System (SAePS). To learn more about how to register, please call (210) 207-0118 or visit http://www.sanantonio.gov/purchasing/saeps.aspx.*

Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub.	$	%		
SAePS Vendor #:			SCTRCA #:	
Sub.	$	%		
SAePS Vendor #:			SCTRCA #:	
A.Total Prime Participation:	$	80 %	*A. Total base bid amount to be kept by prime.*	
B.Total Sub Participation:	$	20 %	*B. Total amount prime will pay to certified and non-certified subcontractors/suppliers*	
C.Total Certified Sub Participation:	$	%	*C. Total amount prime will pay to certified subcontractors/suppliers per the eligibility requirements stated above*	
D.Total Prime & Sub Participation*:	$	%	*D. Total prime and subcontractor(s)/supplier(s) participation must equal your base bid amount (A+B)*	

If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

I HEREBY AFFIRM THAT I POSSESS DOCUMENTATION FROM ALL PROPOSED SUBCONTRACTORS/SUPPLIERS CONFIRMING THEIR INTENT TO PERFORM THE SCOPE OF WORK FOR THE PRICE INDICATED ABOVE. I FURTHER AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Print Name: Pam Vaught **Sign:** Pam Vaught **Title:** VP and COO

Date: 6/2/15

****

FOR CITY USE

Action Taken: Approved_____ **Denied**_____ _____

ASSISTANT DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT