

AN ORDINANCE      **2011-09-29-0801**

**AUTHORIZING A CONTRACT IN THE ANNUAL AMOUNT OF \$78,000.00 WITH KGBTexas.COMMUNICATIONS TO DEVELOP AND IMPLEMENT AN ADVERTISING CAMPAIGN INTENDED TO INCREASE THE NUMBER OF APPLICANTS TO THE SAN ANTONIO POLICE DEPARTMENT (SAPD).**

\* \* \* \* \*

**WHEREAS**, the City wishes to contract with KGBTexas.communications (KGBT) to develop and implement an advertising campaign intended to increase the number of applicants to the San Antonio Police Department (SAPD); and

**WHEREAS**, said contract will be for an initial term of four years, with two one-year options at the discretion of the City; and

**WHEREAS**, the first-year funding for this contract will be \$78,000.00; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager and her designee are hereby authorized to execute the contract attached hereto as **Exhibit I** with KGBT to develop and implement an advertising campaign for the SAPD. The terms of said agreement are hereby approved.

**SECTION 2.** Funding for this ordinance is contingent upon approval of the FY 2012 budget for fund 11001000, and future fiscal year funding is contingent upon approval of subsequent fiscal year budgets. If approved by council, payment not to exceed the budgeted amount is authorized and should be encumbered with a purchase order.

**SECTION 3.** The financial allocations in this ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific cost centers, WBS elements, internal orders, general ledger accounts, and fund numbers, as necessary to carry out the purpose of this ordinance.

**SECTION 4.** This ordinance is effective immediately upon passage, provided that it is passed by eight or more affirmative votes; otherwise, this ordinance will be effective ten days from the date of passage.

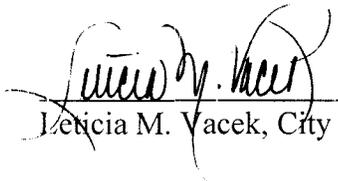
**PASSED AND APPROVED** this 29th day of September, 2011.



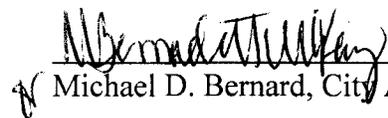
M A Y O R  
Julián Castro

**ATTEST:**

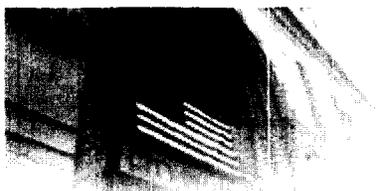
**APPROVED AS TO FORM:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

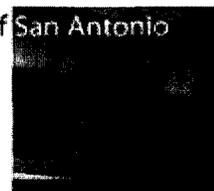


\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 34

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19A, 19B, 20B, 20C, 21, 22, 23, 25, 26A, 26B, 26C, 26D, 26E, 26F, 26G, 26H, 26I, 26J, 27A, 27B, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41A, 41B, 41C						
<b>Date:</b>	09/29/2011						
<b>Time:</b>	11:04:43 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a contract in the annual amount of \$78,000.00 with KGBTexas.communications to develop and implement an advertising campaign intended to increase the number of applicants to the San Antonio Police Department (SAPD). [Erik J. Walsh, Assistant City Manager; William McManus, Police Chief]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

**PROFESSIONAL SERVICES CONTRACT  
BETWEEN  
CITY OF SAN ANTONIO  
AND  
KGBTexas .COMMUNICATIONS**

This contract is made and entered into by and between the City of San Antonio (CITY) and KGBTexas .communications (CONSULTANT) in order that CONSULTANT will assist CITY in conducting a public relations initiative to recruit applicants to the San Antonio Police Department (SAPD).

**I. TERM**

- 1.1 This contract shall commence upon the execution of this contract and shall terminate on the fourth anniversary of the execution of this contract, unless terminated earlier pursuant to the provisions hereof. CITY may, at its option, with prior written notice and without the need for further authorization from the San Antonio City Council, extend this contract for as many as two one-year terms.
- 1.2 CONSULTANT and CITY recognize that the continuation of any contract after the close of any given fiscal year of CITY, which fiscal year ends on September 30, shall be subject to appropriation of funds for the contract. Should funds not be appropriated, this contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**II. SCOPE OF SERVICES**

**A. General**

- 2A.1 In furtherance of CITY's public relations initiative to recruit applicants to the San Antonio Police Department (SAPD), CONSULTANT shall develop and implement an advertising campaign intended to increase the number of applicants to the SAPD. Said campaign shall be developed in consultation with CITY and may not be implemented without the written approval of CITY. Said advertising campaign shall be consistent with the SAPD's mission and values.
- 2A.2 Within fourteen days after the execution of this contract, CONSULTANT shall submit a written proposal outlining recommendations for the expenditure of the SAPD's budgeted advertising monies for the upcoming contract year. No less than thirty days prior to the end of a contract year, including option years, CONSULTANT shall, after consideration of the effectiveness of the campaign to date and the SAPD's advertising budget, submit a written proposal outlining recommendations for the expenditure of the SAPD's budgeted

advertising monies for the upcoming contract year. After CONSULTANT has submitted the aforementioned recommendations, CITY and CONSULTANT shall develop a plan for the expenditure of the available funds. Said plan may not be implemented without the written approval of CITY.

- 2A.3 In furtherance of the aforementioned advertising campaign, CONSULTANT shall, among other related tasks, when requested to do so by CITY, in writing, do the following: (1) conduct strategic planning; (2) conduct project and account management; (3) conduct marketing across various channels (including, but not limited, to print, television, radio, digital, and online marketing); (4) conduct research; (5) develop creative concepts; (6) perform production (executions); (7) conduct media planning; (8) conduct media buying and evaluation; (9) conduct traffic and scheduling; (10) perform public relations; and (11) perform all required accounting and reporting.
- 2A.4 CONSULTANT shall meet with CITY'S staff at such times and places and in such duration as may be requested for the purpose of consulting about, developing, and implementing CITY'S initiatives.
- 2A.5 CITY shall not be obligated to advertise or promote any product or service exclusively through CONSULTANT. CITY reserves the right to perform, manage, or administer any of the functions referenced within this article, at any time during the term of this contract, using CITY personnel.
- 2A.6 Should CONSULTANT believe it necessary to subcontract any of the work required by this contract, CONSULTANT shall comply with article X of this contract.
- 2A.7 All services provided under this contract shall be performed in conformance with generally accepted industry standards that are usual and customary between a client and an advertising agency in such relationships. No work shall be undertaken and no expenditure made for reimbursement hereunder unless the concept and program have been approved in writing by CITY.

### **B. Advertising**

- 2B.1 During the term of this contract, CONSULTANT shall, after reasonable research, recommend advertising opportunities that would be valuable to CITY in its public relations initiative to recruit applicants to the SAPD. Where CITY decides to accept a recommendation of CONSULTANT, CONSULTANT shall implement the recommendation. No recommendation may be implemented without the written approval of CITY.
- 2B.2 CONSULTANT shall not procure services or products pursuant to the contract without the prior written consent of CITY.

- 2B.3 CONSULTANT shall negotiate and contract with advertising media and others, for and in connection with CITY'S advertising, at the most advantageous rates available in the commercial advertising market.
- 2B.4 CONSULTANT shall attempt to obtain added-value elements to all media buys, including additional space or time, online components, and promotional programs. All added-value elements obtained in connection with the services performed pursuant to this contract shall be the property of CITY.
- 2B.5 CONSULTANT shall monitor and review media purchases to ensure vendor compliance with the terms of the purchase. CONSULTANT shall provide CITY with proof of the placement and running of advertisements by providing tearsheets, with date of insertion, or other evidence of placement.
- 2B.6 When providing services to CITY, CONSULTANT shall be cognizant of the compatibility of all proposed technical solutions with existing CITY technology and shall ensure compliance with CITY technical and security standards. Implementation of technical solutions (to include websites, databases, and other marketing systems) shall be coordinated with CITY'S technical staff.

### **C. Website Design, Development, and Maintenance**

- 2C.1 Upon the written request of CITY, CONSULTANT shall host, maintain, and modify the SAPD'S recruiting website, [www.sapdcareers.com](http://www.sapdcareers.com), in accordance with the provisions of this subarticle.
- 2C.2 Hosting. Upon the written request of CITY, CONSULTANT shall host the SAPD'S existing recruiting website, [www.sapdcareers.com](http://www.sapdcareers.com).
- A. CONSULTANT agrees to host the selected website during all or any portion of the term of this contract.
- B. CONSULTANT agrees that should CITY elect to, CITY may, instead, host the website at any time upon written notice to CONSULTANT.
- 2C.3 Maintenance. Upon the written request of CITY, CONSULTANT shall maintain the SAPD'S existing recruiting website, [www.sapdcareers.com](http://www.sapdcareers.com).
- A. CONSULTANT agrees to perform maintenance and content management of the website during the period during which it is hosting the website.
- B. CITY agrees that structural changes and alterations and Web page additions do not constitute maintenance.
- 2C.4 Structural Changes and Alterations and Web Page Additions. CONSULTANT agrees to make structural changes and alterations and add Web pages to the website, at CITY's

request, during the period during which it is hosting the website. CONSULTANT agrees to do such within a reasonable time following CITY's request.

- A. Said modifications shall be developed for use with, at a minimum, the current versions of Internet Explorer, Firefox, Flash Player, Safari (for OS X and iPhone/iTouch/iPad), and Windows.
- B. Said modifications shall be developed in a manner that does not preclude the use, modification, or management of the website by CITY or its contractors.
- C. Said modifications shall be developed in a manner that does not preclude hosting and support by CITY technologies, including Windows servers and ASP.NET.

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- D. Said modifications shall be developed in conformance with Web Content Accessibility Guidelines and free of any and all "disabling devices," "drop dead devices," "time bombs," "trap doors," "Trojan horses," "worms," and computer viruses detectable by means of current industry standards.
- E. Said modifications shall have a modern and high-tech appearance.
- F. Said modifications shall be user friendly.
- G. Said modifications shall, upon the written request of CITY, contain such features as photographs, streaming video, interactive links and feeds, and downloadable forms.
- H. CONSULTANT agrees that where photographs or video are required, but unavailable, CONSULTANT will conduct the necessary photograph and/or video shoot, upon the written request of CITY.
- I. CITY agrees to provide images to be used in said modifications. No image may be used without the consent of CITY.

2C.5 Other. CONSULTANT agrees to the following.

- A. In connection with the aforementioned services, CONSULTANT shall provide website documentation to CITY. Said documentation shall include site maps, diagrams of links, Web page templates, and instructions for making changes to the website content.
- B. Should CONSULTANT make structural changes or alterations or Web page additions to the SAPD's existing website, CONSULTANT shall provide CITY with an electronic version of the website content source code, including all comments and any procedural code, such as job control language.
- C. It is understood that this is a work-for-hire contract for the benefit of CITY.

### III. PAYMENT AND BILLING

- 3.1 Budget. Upon execution and no less than sixty days prior to the end of a contract year, CITY shall advise CONSULTANT, in writing, of the amount of its advertising budget for the upcoming contract year. CITY reserves the right to adjust said amount.
- 3.2 Invoices. No later than the fifteenth day of each month following the first month of this contract, CONSULTANT shall submit an invoice to CITY for its services and the expenses it incurred on behalf of CITY during the previous month. Said invoices shall be accompanied by paid receipts for the aforementioned expenses and shall contain a representation that the services being invoiced were provided pursuant to this contract.
- 3.3 No Media Commissions or Service Charges. All media placement, printing, binding, and production services and all other outside vendor or subcontractor costs shall be billed at actual cost only, with no added commission or other service charges.
- 3.4 Incidental Expenses. CONSULTANT shall be entitled to bill CITY, at CONSULTANT'S net cost, without any commission or mark up, for necessary incidental expenses incurred in connection with CONSULTANT'S rendition of services and performance of duties hereunder, including the cost of packaging advertising material for shipment, postage, messenger, express and other transportation charges for the shipment of such material; and expenses in connection with securing of testimonials and releases.
- 3.5 Media Billing Errors. If scheduled advertising does not run, ran incorrectly, or if there exists any other problem or media billing error, CONSULTANT shall immediately advise CITY and credit or appropriately adjust CITY'S account on the next available billing invoice following the discovery of said media billing problem or error.
- 3.6 Added-Value Elements. All discounts, incentives, media bonuses in the form of travel, and items of value earned by CONSULTANT in purchases for CITY are the property of CITY, and CONSULTANT shall provide a report of such to CITY no later than the fifteenth day of each month.
- 3.7 CONSULTANT Fees. CONSULTANT shall charge CITY labor rates for all services provided to CITY in accordance with Attachment I.
- 3.8 CONSULTANT Overhead Charges. CONSULTANT shall not charge CITY for any usual administrative copying costs or fax charges without the prior written approval of CITY. After obtaining written approval, CONSULTANT may charge CITY for large volume copying costs and reasonable travel expenses. CONSULTANT agrees to make its best effort to obtain the most advantageous rates for any other expenses.
- 3.9 Travel. CITY agrees to reimburse CONSULTANT for travel authorized or requested by CITY. Said reimbursement shall include only reasonable and necessary expenses incurred and shall be consistent with CITY policies and procedures related to travel.

Travel expenses shall mean coach airfare and shall not include first class, business class, or upgrade charges. All travel expenses must be reasonable and necessary to fulfill CONSULTANT'S obligations under this contract and must be supported by appropriate documentation. Additionally, CONSULTANT shall not bill CITY for any hourly fees for personnel solely for travel time.

- 3.10 Media Research Expenses. AGENCY shall not bill CITY for obtaining any services or reports from standard research sources, such as Competitive Media Reporting, Nielsen, Arbitron, Simmons, Broadcast Advertisers Reports, MRI, Claritas, Prizm, and Scarborough (San Antonio listed markets).
- 3.11 Payment. Upon receipt by CITY of a correct invoice from CONSULTANT, CITY agrees to pay CONSULTANT the amount invoiced, so long as the amount invoiced has been invoiced pursuant to the provisions of this contract, within thirty days of the date of receipt. All invoices shall have pre-production approval and be accompanied by a copy of the approved cost estimate. Additionally, all invoices shall include documentation supporting claims for reimbursable expenses.
- 3.12 Third Parties. Except as otherwise expressly provided for herein, CITY shall not be obligated or liable under this contract to any party other than CONSULTANT for payment of any monies or provision of any goods or services.

#### **IV. LICENSES AND CERTIFICATIONS**

- 4.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by CONSULTANT. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.

#### **V. CONFIDENTIAL WORK**

- 5.1 No reports, information, project evaluation, project designs, data, or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this contract shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY.
- 5.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with any applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the CITY's right of access to records or other information under this CONTRACT.
- 5.3 If CONSULTANT receives inquiries regarding documents within its possession pursuant to this contract, CONSULTANT shall immediately forward such request to CITY for disposition.

## **VI. OWNERSHIP OF DOCUMENTS**

- 6.1 All reports, information, and other data given to, prepared by, or assembled by CONSULTANT pursuant to this contract and any other related documents or items shall become the sole property of CITY. Such reports, information, and other data shall be delivered at no cost to CITY upon request or upon termination of this contract without restriction on future use. CONSULTANT may make copies of any and all documents for its files, at its sole cost and expense.
- 6.2 CONSULTANT shall retain all records owned by CITY or to which CITY has access for the retention periods specified by local, state, or federal law.

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## **VII. TERMINATION**

- 7.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term as set out in article I or earlier termination pursuant to any of the provisions of this contract.
- 7.2 CITY may terminate this contract in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to CONSULTANT. Said notice shall specify the date of termination.
- 7.3 In no event shall CITY's action of terminating this contract 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 CONSULTANT for any default hereunder or other action.
- 7.4 If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this contract shall automatically terminate as of the effective date of such prohibition.
- 7.5 Should this contract be terminated prior to completion of the work identified in article II, CONSULTANT shall, within five business days of the effective date of termination, submit to the CITY its claim, in detail, for the monies owed by the CITY for services performed under this contract through the effective date of termination.

## **VIII. NON-WAIVER**

- 8.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract 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 contract, 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 contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. 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.

## **IX. INDEPENDENT CONTRACTOR**

- 9.1 CONSULTANT covenants and agrees that CONSULTANT is an independent contractor and not an officer, agent, servant, or employee of City; that CONSULTANT 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 CONSULTANT, 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 CONSULTANT. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONSULTANT under this agreement and that the CONSULTANT has no authority to bind the CITY.
- 9.2 Regardless of where the work shall be performed, what supplies or resources are provided by CITY, what instruction or direction is provided by CITY, CONSULTANT 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 the compensation provided herein.

## **X. SUBCONTRACTING AND ASSIGNMENT**

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of CONSULTANT.
- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of CONSULTANT, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or after the termination of this contract.
- 10.3 Except as otherwise stated herein, CONSULTANT may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties

hereunder, by transfer, by subcontracting, or by any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted, CONSULTANT shall remain liable for completion of the services outlined in this contract in the event of default by the successor, assignee, transferee, or subcontractor.

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

## **XI. CONFLICT OF INTEREST**

- 11.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and CITY's Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies, or services, if any of the following individuals 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 percent or more of the voting stock or shares of the business entity, or ten 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.
- 11.2 Pursuant to the subsection above, CONSULTANT warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a discretionary contracts disclosure statement in compliance with CITY's Ethics Code.

## **XII. INDEMNITY**

- 12.1 **CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND**

**AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 12.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONSULTANT SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

### **XIII. INSURANCE**

- 13.1 Prior to the commencement of any work under this agreement, CONSULTANT shall furnish copies of all required endorsements and completed certificates of insurance to CITY's Police Department, which shall be clearly labeled "KGBTexas .communications" in the description of operations block of the certificate. The certificates shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept a memorandum of insurance or binder as proof of insurance. The certificates 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 CITY. CITY shall have no duty to pay or perform under this agreement until such certificates and endorsements have been received and approved by CITY's**

Police Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

- 13.2 CITY reserves the right to review the insurance requirements of this article during the effective period of this agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. In no instance will CITY allow modification whereby CITY may incur increased risk.
- 13.3 CONSULTANT's financial integrity is of interest to CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this agreement, and any extension hereof, at CONSULTANT'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:

TYPES	AMOUNTS
<p>Broad form Commercial General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> <li>a. Premises/Operations</li> <li>b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal/Advertising Injury</li> <li>e. Contractual Liability</li> <li>f. Damage to property rented by you</li> </ul>	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p> <p>f. \$100,000</p>
<p>Internet Liability and Network Protection (Cyberrisk)* to include coverage for Security Breach, Performance Delay, Intellectual Property and Software Design Error. (Claims Made Form).</p> <p>To be maintained and in effect for no less than two years subsequent to the completion of the professional services.</p> <p>* Technology E&amp;O Coverage, in the same amounts, may be substituted for this requirement.</p>	<p>\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in computer-based and/or internet services.</p>

- 13.4 CONSULTANT agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of CONSULTANT herein, and provide a certificate of insurance and endorsement that names CONSULTANT and CITY as additional insureds. CONSULTANT shall provide CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modifications may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the agreement for all purposes.
- 13.5 As they apply to the limits required by CITY, CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration pages, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are

established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within ten days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

Contract Services Manager  
San Antonio Police Department  
214 W. Nueva  
San Antonio, Texas 78207

- 13.6 CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions: (1) name CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies; (2) provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy; (3) workers' compensation, employers' liability, general liability, and automobile liability policies provide for a waiver of subrogation in favor of CITY; and (4) provide advance written notice directly to CITY of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten-calendar-days' advance notice for nonpayment of premium.
- 13.7 Within five calendar days of a suspension, cancellation, or non-renewal of coverage, CONSULTANT shall provide a replacement certificate of insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.
- 13.8 In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payments which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this agreement.
- 13.10 It is agreed that CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this agreement.

- 13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.
- 13.12 CONSULTANT and any subcontractors are responsible for all damage to their own equipment and/or property.

#### **XIV. CHANGES AND AMENDMENTS**

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT.
- 
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

#### **XV. ENTIRE AGREEMENT**

- 15.1 This contract and its exhibits 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 contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

#### **XVI. SEVERABILITY**

- 16.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the city charter, city code, or ordinances of the city 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 contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

#### **XVII. NOTICES**

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Training Academy Commander  
San Antonio Police Department  
12200 S.E. Loop 410  
San Antonio, Texas 78221

CONSULTANT

Melanie Thompson  
KGBTexas .communications  
1919 Oakwell Farms Parkway, Suite 100  
San Antonio, Texas 78218

**XVIII. LAW APPLICABLE**

- 18.1 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.
- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

**XIX. LEGAL AUTHORITY**

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

**XX. PARTIES BOUND**

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

**XXI. GENDER**

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

**XXII. CAPTIONS**

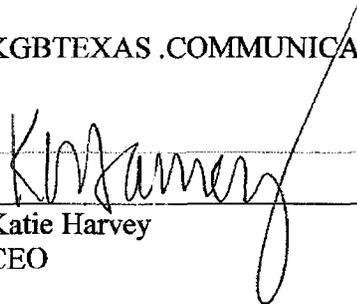
22.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

EXECUTED IN DUPLICATE ORIGINALS on \_\_\_\_\_, 2011.

CITY OF SAN ANTONIO

KGBTEXAS .COMMUNICATIONS

\_\_\_\_\_  
Sheryl L. Sculley  
City Manager

  
\_\_\_\_\_  
Katie Harvey  
CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney