LOC
08/06/15
Item No. 22

AN ORDINANCE 2015-08-06-0649

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH SOGO WEALTH & RISK MANAGEMENT TO PROVIDE RISK MANAGEMENT CONSULTING AND INSURANCE BROKER OF RECORD SERVICES TO THE CITY FOR A 3-YEAR TERM BEGINNING AUGUST 20, 2015 AND ENDING AUGUST 19, 2018, WITH TWO RENEWAL TERMS OF ONE YEAR EACH AT THE CITY'S OPTION, WITH TOTAL COMPENSATION NOT TO EXCEED $154,000.00 PER YEAR.

* * * * *

WHEREAS, the City released a Request for Proposals (RFP) to provide the City with risk management consulting and insurance broker of record services; and

WHEREAS, two responses were received and evaluated in conformance with the criteria contained in the RFP; and

WHEREAS, the evaluation committee recommends SOGO Wealth & Risk Management, who had the highest ranking proposal, for award of this contract; **NOW THEREFORE:**

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

SECTION 1. SOGO Wealth & Risk Management is hereby selected to provide risk management consulting and insurance broker of record services for an annual fee of $154,000.00. The City Manager, her designee, or the Director of the Finance Department, or his designee are hereby authorized to execute the contract for said services, a copy of which is attached hereto and incorporated herein as **Exhibit I**. The terms of said contract are hereby approved.

SECTION 2. Funding for this ordinance is available as part of the Fiscal Year 2015 budget per the table below.

Amount	General Ledger	Cost Center	Fund
$ 119,167.00	5201040	0709020008	75001000
$ 5,727.00	5201040	0709020001	75001000
$ 29,106.00	5201040	0709030001	75003000
Total Amt $ 154,000.00			

SECTION 3. Additional funding for this ordinance is contingent upon City Council approval of Fiscal Year 2016 & 2017's Budget. Future funding in the amount through the renewal terms of this contract is contingent upon City Council approval of subsequent fiscal year budgets.

Payment not to exceed the budgeted amount is authorized to SOGO Wealth & Risk Management and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage hereof.

PASSED AND APPROVED this 6th day of August, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**22 (in consent vote: 5, 6, 7, 9, 11, 12, 15, 16, 17, 18, 20, 21, 22, 23, 26A, 26B)**
Date:	08/06/2015
Time:	11:05:50 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Professional Services Agreement with SOGO Wealth & Risk Management, to provide Risk Management Consulting and Insurance Broker of Record services to the City for a 3-year term beginning August 20, 2015 and ending August 19, 2018, with two renewal terms of one year each at the City's option, with total compensation not to exceed $154,000.00 per year. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

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

AGREEMENT FOR RISK MANAGEMENT CONSULTING SERVICES & INSURANCE BROKER OF RECORD

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 Director of Finance, pursuant to Ordinance No. 2015-__-__-____ passed and approved on the _____ day of _____, 2015 and SOGO Wealth & Risk Management by and through its partner, Joshua R. Hernandez ("Consultant" or "SOGO"), both of which may be referred to herein collectively as the "Parties".

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

I. DEFINITIONS

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

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

1.2 "Consultant" is defined in the preamble of this Agreement and includes its successors and permitted assigns.

1.3 "Director" shall mean the director of City's Finance Department.

II. TERM

2.1 The term of this Agreement shall be for a period of three (3) year beginning August 20, 2015 and ending on August 19, 2018, unless renewal and extension or earlier termination occurs pursuant to any other provision contained in this Agreement.

2.2 At City's option, this Agreement may be renewed and extended beyond the date stated above under the same terms and conditions for two (2) additional one (1) year periods. City shall also have the right to extend the contract under the same terms and conditions beyond the term or any renewal thereof, on a month-to-month basis, not to exceed a total of 180 days. All renewals and/or extensions shall be in writing, signed by the City Manager, or her designee, or the Director of

the Finance Department, and shall not require additional action by the City Council. All renewals shall be subject to appropriation of funds by the City Council.

2.3 If funding for the entire Contract is not appropriated at the time this Contract 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 Consultant 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 Broker of Record. Consultant shall provide Broker of Record services, including but not limited to the following.

3.2.1 Assist City in the analysis and design of optimal insurance coverage and keep City informed of significant market conditions that may affect its insurance programs by providing early warning of pending rate, coverage or renewal problems, including significant changes in the financial status of insurers; keep City apprised of market forecasts prior to each renewal; advise City about pricing, service trends, availability of markets and the longer term direction of the market and particular insurers.

3.2.2 Work closely with City to develop Market Requests to secure excess workers' compensation and liability insurance, as well as other potential excess and primary policies.

3.2.3 Assist in the preparation of detailed underwriting submission data, statements of values, specifications, loss summaries, and other information required by underwriters. Marketing shall include, but not be limited to, development of insurance specifications and underwriting criteria, development of Requests for Quotes (in accordance with Chapter 252 of the Texas Local Government Code) from insurance companies, canvassing insurance markets, reviewing suitable manuscript policies, and conducting negotiations on behalf of City to secure the broadest coverage at the best available cost.

3.2.4 Provide unbiased information regarding the most advantageous insurance markets and insurance coverage options for selection by City.

3.2.5 Assist City in the analysis and design of insurance policy wording, and structure insurance programs to eliminate gaps and overlaps in coverage

and recommend limits and coverages to provide City with the greatest amount of protection. Provide City with a copy of submissions for presentation to markets prior to their release.

3.2.6 Review responses along with City and assist in the selection of insurance providers, and provide City with a written evaluation of the basic structure of each policy, including coverage, exclusions, terms, analysis of coverage scope, cost, services, and other essential information in a format suitable for use as a high level executive summary document.

3.2.7 Begin renewal process at least 150 days prior to renewal to ensure City's deadlines are met. Present insurance submission to City at least 125 days prior to renewal for review. Present all insurance proposals to City at least 45 days prior to renewal, including, but not limited to, quotes, sample policy forms and/or endorsements. Provide a marketing summary of all markets approached, quotes and indications requested and received from insurers in response to underwriting proposals. Tender to City a recommendation for review no later than thirty (30) days prior to policy renewal. Any resulting product cannot be accepted or bound until approved by the San Antonio City Council by passage of an ordinance therefore, except in those cases where authority is delegated to an administrative official. All procurement of insurance shall be conducted in accordance with the requirements contained in the Texas Local Government Code Chapter 252, as it may be amended from time to time, and all applicable law.

3.2.8 After City's election of coverage and prior to delivery of policies, verify the accuracy and adequacy of all binders, policies, and endorsements to ensure that wording is complete and accurate and that coverage is in compliance with specifications negotiated. Perform these services within 30 days of receipt of policies. Provide City with an outline of any issues found during the verification process, any request for clarification from the carrier, and advice regarding when and how the issue(s) are resolved. Prepare a Schedule of Insurance report detailing coverage bound for City immediately following placement of coverage. Provide Coverage Summaries within 60 days of renewal.

3.2.9 Issue binders, certificates of insurance, and other coverage documents as required.

3.2.10 Assume oversight responsibilities for any insurance policies City has in place at the beginning of the Consultant's contract period.

3.2.11 Review premium and exposure audits from the carrier.

3.2.12 Provide all carrier invoices in a timely manner and allocate premium, preparing separate invoices to match the allocation if required by City and allocating losses to applicable operating departments or strategic business units.

3.2.13 Monitor financial information of the City carriers and alert the City when they fall below either Consultant's or its subcontractor's minimum financial guideline.

3.2.14 Provide City with quarterly policy registers, quarterly open items report and include a list of all upcoming renewal policies.

3.2.15 Negotiate payment terms and conditions prior to binding coverage.

3.3 Consultant Services. SOGO shall provide Consultant Services, including but not limited to the following.

3.3.1 Advise City on an appropriate timeline prior to renewal of each policy to develop Market Requests and to secure any and all coverages for City's insurable risks. The objective is to place insurance coverage for City's insurance program in accordance with the desired terms, conditions, and limits. This service involves developing insurance specifications and marketing submissions, and preparing an evaluation of responses. Make available to City all resources at its disposal to collect, organize and review all data properly.

3.3.2 Act in an advisory and consulting role to City for the duration of this Agreement to ensure that the insurance carrier adheres to all terms and conditions negotiated by the carrier and City.

3.3.3 Assist City in evaluating proposals from potential contractors for programs, including but not limited to Owner Controlled Insurance programs and Contractor Controlled Insurance programs, as required.

3.3.4 Participate in the continuing development and enhancement of City's overall risk management program, including recommendations on coverage changes and program adjustments, as needed.

3.3.5 Assist in refining risk assessment and risk survey instruments utilized by City and assist in the evaluation of data collected from risk surveys to identify and measure exposures and new coverage needs.

3.3.6 Provide and/or collect industry survey/benchmark information upon request and assist City with evaluating data in making prudent risk management decisions.

3.3.7 Participate in the development (and improvement) of risk control programs for the various units, programs, and activities of City, as well as in the evaluation of risk financing opportunities and alternatives which may be available to City.

3.3.8 Provide contract review and insurance services support and assist City in the development of standards to be used for contract provisions and review.

3.3.9 Keep City informed of relevant trends, regulatory changes, and new insurance products. Review contractual risk transfer techniques when requested.

3.3.10 Provide assistance with forecasting and budgeting for annual claims and risk management-related expenditures, including a market forecast by line of coverage and claims trending during the City's budget period.

3.3.11 Provide information related to claims trends that may affect City's claims costs and provide solutions to manage those trends.

3.3.12 Act as City's advocate in claims disputes and in obtaining loss settlements from insurance carriers, assist in preparation of proof of loss, negotiate with insurers, resolve coverage disputes, identify and correct breakdowns in the claims-handling process. Consultant's claims advocacy services shall include, but not be limited to:

- Evaluate coverage applicability on all placed insurance and reinsurance contracts
- Strategic claims reviews; such as a quarterly claims review on all claims valued $25,000 and up
- Advise on the presentation of your claims, including coverage reviews, prepare loss notices and review proof of loss documents

3.3.13 Prepare and present a formal annual stewardship report to City on the past year's activities and future plans and goals. Within 45 days after the physical year end, deliver a stewardship report encompassing the following items:

- Existing program overview including coverage summaries, schedule of policies in force, premiums, ongoing claims experience and compensation review;
- Major accomplishments and significant events within the preceding year;
- Ongoing activities and initiatives in support of the City's insurance program and overall risk management goals;
- Mutually agreed upon objectives; and

- Anticipated market conditions.

3.4 Loss Control Services. Consultant shall provide the following Loss Control Services.

3.4.1 Support City's loss control efforts and arrange for Loss Control and Safety Audit Services upon request and authorization by the City's Risk Manager. Work with City to evaluate the effectiveness of its current loss prevention program and make recommendations on how to address any deficiencies found to strengthen the overall program. Assist in the development of City's written safety policies and procedures to accurately reflect exposures, regulatory agency requirements, and internal best practices.

3.4.2 Provide no less than 60 hours annually for Loss Control and Safety Audit services. The cost for this minimum number of hours shall be included in the Annual Service Fee. Additional service hours beyond the minimum may be requested by the City from time to time during the contract term and shall be provided by Consultant at the pricing indicated in Article IV herein.

3.4.3 Loss Control and Safety Audit services include, but are not limited to:

- in-house training ;
- safety program evaluations;
- evaluation of high-risk activities;
- ergonomic studies;
- job safety/hazard analysis of specific worker activities;
- assistance in the identification and evaluation of loss exposure as requested, including comparative data regarding other public entities that share the size and scope of City;
- providing loss prevention strategies to reduce said exposures;
- business continuity planning; and
- contract safety language development and review.

3.4.4 Summit Training Modules/OTIS Trainingweb®. In addition to the 60 hours Loss Control and Safety Audit Services, and at no extra cost, Consultant shall provide unlimited access to its Summit Training Modules/OTIS Trainingweb® consisting of over 120 online courses in environmental, health and safety, reviewed by content experts and OSHA trainers, in English and Spanish, with technical support team available 24 hours a day, 7 days a week.

3.4.5 eRisk Hub Portal. Consultant shall, at its own cost and expense, provide City with access to eRisk Hub Portal for the duration of this Agreement for 2 users, with access 24 hours per day, 7 days per week. eRisk Hub

Portal is a private Web-based service, Founded and managed by NetDiligence, designed to help manage cyber and privacy risk. The eRisk Hub provides news, content, and services across a broad range of disciplines, including legal and regulatory compliance, IT security, privacy, disaster recovery and business continuity, computer forensics and public relations. Key features of the eRisk Hub include:

- **Breach Coach™** – Breach Coach service, staffed by attorneys who are certified privacy professionals, provides immediate triage assistance in the event of a breach;
- **News center** – with cyber risk stories, security and compliance blogs, security news, risk management events, and helpful industry links;
- **Learning center** – containing best-practices articles and white papers written by leading technical and legal professionals on compliance, network security, privacy, and breach recovery; and
- **eRisk resources directory** – directory of security consultants, PCI and FACTA specialists, forensic investigators, e-discovery specialists, with information about their services, pricing, and key personnel.

3.5 Response Times. Response time for routine requests, such as certificates of insurance, auto identification cards, etc. shall be 24 hours, if not the same day, with the exception of City holidays and weekends. Other responses shall be provided within 24 hours, with the exception of City holidays and weekends. Requests for certificates deemed urgent by City shall be handled within one hour.

3.6 Market Trend Reports. Consultant shall provide City with a copy of each of its, and its subcontractor's, publications and reports to keep City informed of current market trends, including but not limited to, (1) monthly Risk Issues Newsletter relaying the latest insurance and risk trends, and (2) quarterly state of the market periodical that summarizes underwriting results and renewal trends.

3.7 CyberSure® (a proprietary Wells Fargo Insurance product). Consultant shall obtain user access to CyberSure® from its subcontractor, Wells Fargo Insurance Services USA, Inc., on behalf of City for 4 users for CyberSure®, a web based risk management solution tool for the duration of this Agreement, including all renewals, at no additional charge. Using CyberSure®, City may:

- Change and request to add or delete locations, vehicles, drivers, equipment and more;
- Apply for new coverage and renew existing coverage;
- Access a summary of your insurance program;
- Report claims and obtain a history of your claim reports;
- Track incoming and out-going certificates of insurance with our online certificate request forms and our certificate issuance tool;
- Request motor vehicle reports;
- Access a variety of useful worksheets and checklists;

- Manage City's fleet with online forms and resources;
- Collaborate with City's SOGO account team with My Documents, the online document storage area;
- Available 24 hours a day, 7 days a week, and 365 days a year; and
- Print insurance certificates and auto identification cards through CyberSure®.

3.8 Origami Risk Client Portal Technology License. Consultant shall obtain user access to Origami Risk Client Portal from its subcontractor, Wells Fargo Insurance Services USA, Inc., on behalf of City for 4 users for the duration of this Agreement, including all renewals. City shall have full reporting and access at no additional charge.

3.9 Surety Services. Consultant shall provide the following services, if requested by City:

- Access to a web-based bond request and execution platform (ADD)
- Financial analysis and benchmarking
- Bond approval and execution
- Contract review and analysis
- Bond placement and negotiation
- Indemnity analysis and negotiation
- Pre-claim Bond mitigation
- Strategies to increase surety capacity and reduce surety cost
- Surety submission preparation
- Bond form language review and analysis

3.10 Additional Services. Consultant shall provide the following additional services:

3.10.1 Regulatory review and compliance services

3.10.2 Risk retention analysis

3.10.3 Program comparison and cash flow modeling

3.10.4 Benchmarking

3.11 All work performed by Consultant 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 Consultant, 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 Consultant'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.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant'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 Consultant:

4.1.1 $154,000.00 annually for all services identified in Article III, except for those identified below;

4.1.2 $12,833.33 per month, for the monthly service fee during optional monthly extension periods, if exercised, pro-rata, should less than a full month be exercised;

4.2 Consultant shall invoice City as follows:

4.2.1 Consultant shall submit monthly invoices in arrears for $12,833.33 for all services provided in Article III. Scope of Services.

4.2.2 Consultant shall submit all invoices to City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, TX 78283-3976, with a copy to City of San Antonio, Attn: Debra Ojo, Risk Manager, P.O. Box 839966, San Antonio, TX 78283-3966.

4.3 City shall pay all invoices within 30 days of receipt thereof. Payment shall be deemed made upon posting of the check. All payments are to be made to Consultant at 7330 San Pedro, Suite 206, San Antonio, Texas 78216, or, if different, to the address stated on the invoice.

4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant for the original contract term 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 City Council by passage of an ordinance therefore.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant 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 Consultant, for the payment of any monies or the provision of any goods or services.

4.6 Pursuant to the Texas Local Government Code §252.024 Selection of Insurance Broker – Consultant shall not receive any other remuneration from any other

source. Consultant shall not accept commissions, gifts, entertainment, items of material value, or other incentives, or compensation of any kind from third parties for placement of coverage.

V. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant 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 Consultant.

5.2 Consultant 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.

5.3 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Consultant under this Agreement shall be disclosed or made available to any individual or organization by Consultant without the express prior written approval of City. In the event Consultant receives any such request, Consultant shall forward such request to City immediately.

5.4 Consultant shall establish a method to secure the confidentiality of records and information that Consultant may have access to in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.

VI. RECORDS RETENTION

6.1 Consultant 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 Consultant 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, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant 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 Consultant to return said documents to City prior to or at the conclusion of said retention at Consultant's expense.

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by the City upon 30 calendar 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;

7.3.2 Neglect or failure by Consultant to perform or observe any of the material terms, conditions, covenants or guarantees of this Agreement or of any amendment between City and Consultant; or

7.3.3 Violation by Consultant of any law, rule, or regulation to which Consultant is bound or shall be bound under the terms of this Agreement.

7.4 Defaults with Opportunity for Cure. Should Consultant 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. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant 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 Consultant 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 Consultant against Consultant'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 A – SBEDA Program Compliance;

7.4.2 Failing to perform or failing to comply with any covenant herein required, other than a material term;

7.4.3 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, Consultant 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 Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant 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 Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant 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, Consultant shall cease all operations of work being performed by Consultant 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 Consultant 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 delivery 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, unless and until otherwise notified in writing by the respective Party, 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: Debra Ojo, Risk Manager
Finance Department, Risk Management Division
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Consultant, to:

SOGO Wealth & Risk Management
Attn: Joshua R. Hernandez
7330 San Pedro, Suite 206
San Antonio, Texas 78216

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "*Risk Management Consulting Services & Insurance Broker of Record*" 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate should 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 Finance 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 whereby City may incur increased risk.

10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor'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 $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$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 professional services.

10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Respondent shall provide the 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 modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 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 required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Finance Department, Risk Management Division
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

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

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

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

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

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

10.11 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 the City shall be limited to insurance coverage provided..

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

XI. INDEMNIFICATION

11.1 **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, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE**

WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant 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 Consultant. Consultant, 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 Consultant intends to use the following subcontractors in the performance of this Agreement: Wells Fargo Insurance Services USA, Inc. Any deviation from this

subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director. Changes may be made to Consultant's SBEDA Utilization Plan with the written approval of Director and City's SBEDA Program Manager.

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 Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, 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, Consultant 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, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, 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 Consultant 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 Consultant 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 Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that it 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 *respondeat 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.

XIV. RESERVED.

XV. CONFLICT OF INTEREST

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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, Consultant 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. Consultant 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 Consultant. The Director of Finance shall have the authority to amend this Agreement without additional action by the City Council; however, any amendments that require additional appropriation of funds shall be subject to approval by the City Council, as evidenced by passage of an ordinance.

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

Consultant warrants and certifies that Consultant 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 Consultant 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 Director, 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 Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant 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 precedence over all attachments:

25.1 Attachment "A" – SBEDA Program Compliance.
25.2 Attachment "B" – Consultant's SBEDA Utilization Plan

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its attachments, 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.

EXECUTED and **AGREED** to by the Parties as indicated below.

CITY OF SAN ANTONIO	**SOGO WEALTH & RISK MANAGEMENT**
By: _____	By: _____
Name: _____	Name: Joshua R. Hernandez
Title: _____	Title: Partner
Date: _____, 2015	Date: July 15, 2015

Approved as to Form:

_____
Assistant City Attorney