

AN ORDINANCE      2013 - 04 - 04 - 0232

**APPROVING A THREE YEAR CONTRACT WITH BOOTH RESEARCH GROUP, INC. AT A COST OF \$500,000.00 TO DEVELOP VALIDATED WRITTEN PROMOTIONAL EXAMINATIONS FOR ALL TESTED PROMOTIONAL RANKS OF THE SAN ANTONIO FIRE DEPARTMENT AND TO PREPARE, ADMINISTER AND SCORE PROMOTIONAL ASSESSMENT CENTERS FOR THE RANK OF DISTRICT FIRE CHIEF, AND PROVIDING FOR ONE TWO-YEAR EXTENSION AT THE CITY'S OPTION.**

\* \* \* \* \*

**WHEREAS**, the City requires the services of a consultant to prepare validated promotional written examinations for the positions of fire engineer, fire lieutenant, fire captain, and district fire chief and to prepare, administer, and score promotional assessment centers for the rank of district fire chief; and

**WHEREAS**, five proposals were submitted in response to the issuance of the City's request for proposals for these services; and

**WHEREAS**, the proposal submitted by Booth Research Group, Inc. (Booth) scored the highest in the City's evaluation; and

**WHEREAS**, the City wishes to enter into a contract with Booth in an amount not to exceed \$500,000.00 with a primary term of three years and an optional two-year extension; and

**WHEREAS**, the first-year cost of the contract will not exceed \$188,000.00; **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 Booth to prepare validated promotional written examinations for the positions of fire engineer, fire lieutenant, fire captain, and district fire chief and to prepare, administer, and score promotional assessment centers for the rank of district fire chief. The terms of the contract are hereby approved.

**SECTION 2.** Funding in the amount of \$144,500.00 for this Ordinance is available in fund 11001000, cost center 8002140001, and general ledger 5201040 as part of the FY2013 budget. Funding in the amount of \$355,500.00 for this Ordinance is contingent upon City Council approval of FY2014 and FY2015 budgets for fund 11001000, cost center 8002140001, and general ledger 5201040. Payment not to exceed the budgeted amount is authorized to Booth Research Group, Inc. and should be encumbered with a purchase order and is dependent upon the availability of funds for current and future fiscal year budgets.

**SECTION 3.** 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 4.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED** this 4<sup>th</sup> day of April, 2013.



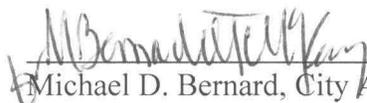
M A Y O R  
Julián Castro

**ATTEST:**

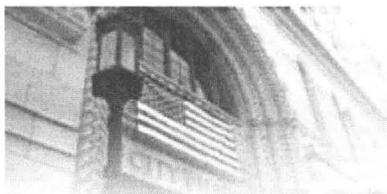


\_\_\_\_\_  
Leticia M. Vacek, City Clerk

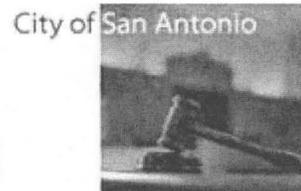
**APPROVED AS TO FORM:**



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



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 24

<b>Name:</b>	5, 6, 7, 9, 10, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32						
<b>Date:</b>	04/04/2013						
<b>Time:</b>	09:32:37 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance approving a three year contract with Booth Research Group, Inc. at a cost of \$500,000.00 to develop validated written promotional examinations for all tested promotional ranks of the San Antonio Fire Department and to prepare, administer and score promotional Assessment Centers for the rank of District Fire Chief, and providing for one two-year extension at the City's option. [Ben Gorzell, Chief Financial Officer; Joe Angelo, Chief Human Resources Officer]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

PROFESSIONAL SERVICES AGREEMENT  
FOR  
WRITTEN PROMOTIONAL EXAMINATIONS and PROMOTIONAL ASSESSMENT  
CENTER for the SAN ANTONIO FIRE DEPARTMENT

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation, "City", acting by and through its City Manager, pursuant to Ordinance No. 2013-\_\_\_\_-\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 and Booth Research Group, Inc. by and through its president, Walter S. Booth, "Contractor", collectively, the "Parties".

The Parties agree, by the execution of this contract, to the mutual obligations and the performance and accomplishment of the tasks described below.

I.       DEFINITIONS

1.1       As used in this Agreement, the following terms shall have meanings:

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

"Contractor" is defined in the preamble of this Agreement and includes its successors.

"Chief Human Resources Officer" shall mean the Chief Human Resources Officer of the City of San Antonio, Texas.

II.       TERM

2.1       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 one two-year term.

2.2       CONTRACTOR 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.

III.       SCOPE OF SERVICES

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

### 3.2 WRITTEN PROMOTIONAL EXAMINATION

- A. **CONTRACTOR** shall complete a properly structured, updated, detailed job/task analysis for the positions of Fire Engineer, Fire Lieutenant, Fire Captain, and District Fire Chief in the San Antonio Fire Department. Each written examination shall consist of questions relating to the duties of the classification of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related written examinations.
- B. **CONTRACTOR** shall prepare a validated job-related written examination and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.
- C. **CONTRACTOR** shall prepare each examination in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, to include but not limited to, EEOC, ADA, and Department of Justice.
- D. **CONTRACTOR** shall prepare a master examination for each rank, with 100 questions per examination drawn from a pre-approved list of study materials, and answer keys for each of the examinations constructed. **CONTRACTOR SHALL DELIVER SAME TO THE** Chief Human Resources Officer no later than two (2) weeks prior to the date of each examination, a camera-ready master examination and an answer key. **CONTRACTOR** must have the capability to complete the process of developing and delivering a validated examination within a minimum of 45 days of receiving notification by the **CITY**.
- E. **CONTRACTOR** shall develop questions that are unique to each particular examination.
- F. **CONTRACTOR** shall ensure primary and active involvement in all phases of the scope of work by a principal of the firm.
- G. **CONTRACTOR** shall prepare for the defense of, and defend, any examination questions which may be appealed during the five (5) day review period. This work will be compensated at a pre-determined hourly rate. **CONTRACTOR** shall correct any manifest errors.
- H. **CONTRACTOR** shall compile item analyses and other statistics for disparate impact and submission of statistical reports upon request.
- I. **CONTRACTOR** shall provide litigation consulting and expert testimony, as and when needed, to be compensated at a pre-determined hourly rate.

- J. **CONTRACTOR** shall ensure compliance with Chapter 143 of the Local Government Code and the current Collective Bargaining Agreement between The City of San Antonio and the International Association of Fire Fighters Local 624, as applicable, with regard to the development and administration of the written promotional exam.
- K. **CONTRACTOR** shall ensure that all services shall be performed to the satisfaction of the Chief Human Resources Officer, and the City of San Antonio shall have exclusive use of the examinations including all examination questions and scenarios developed for the **CITY**.
- L. **CONTRACTOR** shall prepare the examinations in a manner that ensures the strictest confidentiality regarding all aspects of the process. **CONTRACTOR** shall perform all services required and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services shall be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.

3.3 PROMOTIONAL ASSESSMENT CENTER

- A. **CONTRACTOR** shall conduct a properly structured, updated, detailed job/task analysis for the position of District Fire Chief in the San Antonio Fire Department. The assessment center process shall be designed so that all exercises are related to the requirements of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related assessment center.
- B. **CONTRACTOR** shall prepare, administer and score a validated job-related assessment center process and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.
- C. **CONTRACTOR** shall prepare, administer, and score each assessment center process in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, including but not limited to, EEOC, ADA, and Department of Justice.
- D. **CONTRACTOR** shall compile item analysis and other statistics for disparate impact and submission of statistical reports upon request.
- E. **CONTRACTOR** shall provide litigation consulting and expert testimony as and when needed, to be compensated at a pre-determined hourly rate.
- F. **CONTRACTOR** shall ensure compliance with the current Collective Bargaining Agreement between the City of San Antonio and the International Association of Fire Fighters Local 624, as applicable, with

regard to the development and administration of the assessment center process.

- G. **CONTRACTOR** shall perform all services required with active involvement in the scope of work of a principal of the firm, and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services will be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.
- H. **CONTRACTOR** shall ensure that all services are to be performed to the satisfaction of the Chief Human Resources Officer.

#### COORDINATION WITH THE CITY

3.4 The **CITY** agrees to provide sufficient cooperation with respect to any data collection steps during the job analysis and test development phases. The **CITY** will coordinate diverse assessment center panels, interview schedules and identify interview locations as necessary.

- A. The **CITY** agrees to prepare and post the examination announcements and registration lists.
- B. The **CITY** agrees to coordinate and acquire use of the facilities in which to hold the examination.
- C. The **CITY** agrees to administer and score the written promotional examinations.
- D. The **CITY** agrees to develop, approve and distribute the eligibility lists/written examination scores.
- E. The **CITY** will coordinate the selection and availability of assessment board members in accordance with requirements established in the CBA with regard to staffing and conducting District Fire Chief assessment centers.

3.5 The **CONTRACTOR** shall hold periodic conferences with the **CITY** designee so that the project, as developed, shall have the full benefit of **CITY's** experience and knowledge of existing needs and facilities and be consistent with its current policies and standards.

3.6 **CITY** shall provide written notice to **CONTRACTOR** of any errors or omissions discovered in **CONTRACTOR's** services, or performance, or of any development that affects the scope or timing of **CONTRACTOR's** services.

3.7 All work performed by **CONTRACTOR** hereunder shall be performed to the satisfaction of Chief Human Resources Officer. The determination made by the Chief Human Resources Officer shall be final, binding and conclusive on all Parties hereto. **CITY** shall be under no obligation to pay for any work performed by **CONTRACTOR**, which is not

satisfactory to the Chief Human Resources Officer. **CITY** shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should **CONTRACTOR**'s work not be satisfactory to the Chief Human Resources Officer; 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 CONTRACTOR

4.1 In consideration of **CONTRACTOR**'s performance in a satisfactory and efficient manner, as determined solely by Chief Human Resources Officer, of all services and activities set forth in this Agreement, **CITY** agrees to pay **CONTRACTOR** an amount not to exceed \$834,000 dollars as total compensation, to be paid to **CONTRACTOR** as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Job/Task Analysis:</b>					
Fire Engineer (per analysis performed)	\$8,000			\$9,500	
Fire Lieutenant (per analysis performed)	\$8,000			\$9,500	
Fire Captain (per analysis performed)	\$8,000			\$9,500	
District Fire Chief (per analysis performed)	\$8,000			\$9,500	
<b>Development of Written Examinations:</b>					
Fire Engineer (Exam "A")	\$19,500	\$19,500	\$19,500	\$20,500	\$20,500
Fire Engineer (Exam "B")	\$15,000	\$15,000	\$15,000	\$18,000	\$18,000
Fire Lieutenant (Exam "A")	\$19,500	\$19,500	\$19,500	\$20,500	\$20,500
Fire Lieutenant (Exam "B")	\$15,000	\$15,000	\$15,000	\$18,000	\$18,000
Fire Captain (Exam "A")	\$19,500	\$19,500	\$19,500	\$20,500	\$20,500
Fire Captain (Exam "B")	\$15,000	\$15,000	\$15,000	\$18,000	\$18,000
District Fire Chief (Exam "A")	\$19,500	\$19,000	\$19,000	\$20,500	\$20,500
<b>Assessment Center Development &amp; Administration:</b>					
District Fire Chief	\$24,000	\$24,000	\$25,000	\$25,000	\$26,000

Rate for Defense of Appealed Test Questions \$250 per hour  
 (Maximum compensation not to exceed nine (9) hours for each type of written examination)

Rate for Expert Testimony in the Event of Litigation \$ 250 per hour

4.2 **CITY** agrees to make payment to **CONTRACTOR** based upon work completed in the performance of this contract upon receipt of an itemized bill or statement, provided such work is approved by the Chief Human Resources Officer. Payment shall be made for services completed as to each item listed above at the respective rate indicated in the fee schedule.

4.3 Total payment to **CONTRACTOR** cannot exceed those amounts set forth above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an Ordinance therefore.

4.4 The **CITY** agrees to pay for expert testimony, as and when needed, to be compensated at the rate of \$250 per hour. **CONTRACTOR**'S travel costs will be billed at the

lowest non-restrictive coach rate from Parker, Colorado or the nearest airport located near Parker, Colorado, plus lodging and per diem. Attendance at test question appeal hearings shall be compensated at \$250 per hour, not to exceed the amounts shown in the above fee schedule.

4.5 **CONTRACTOR** acknowledges and agrees that it shall provide services under this **CONTRACT** at a certain level with a certain degree of accuracy and timeliness. Therefore, **CONTRACTOR** agrees to the following performance standards and administrative fee adjustments:

4.5.1 The aggregate service fee for each examination or assessment center conducted under the terms of this **CONTRACT** will be reduced by 5% if necessary based on a performance audit of that examination or assessment center if time lines established for the completion and/or administration and scoring of written exams and assessment centers, as applicable, are not met. Fees will be separately reduced by 5% if more than two (2) questions are rejected by the San Antonio Fire and Police Civil Service Commission because either the question was not drawn from the specified study materials or the answer key was in error.

4.5.2 Nothing contained in this **CONTRACT** shall require **CITY** to pay for any unsatisfactory work, as determined by Chief Human Resources Officer, or for work that is not in compliance with the terms of this **CONTRACT**. **CITY** shall not be required to make any payments to **CONTRACTOR** at any time **CONTRACTOR** is in default under this **CONTRACT**.

4.5.3 Despite the **CITY'S** possible approval of an assignee or subcontractor, the **CITY** shall, in no event, be obligated to any third party, including any assignee or subcontractor of the **CONTRACTOR**, 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 extending beyond the expiration date of this **CONTRACT**.

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

4.5.5 Final acceptance of work products and services require written approval by **CITY**. The approval official shall be Chief Human Resources Officer. Payment will be made to **CONTRACTOR** following written approval of the final work products and services by Chief Human Resources Officer. **CITY** shall not be obligated or liable under this Agreement to any party, other than **CONTRACTOR**, for the payment of any monies or the provision of any goods or services.

## V. **OWNERSHIP OF DOCUMENTS BY THE CONTRACTOR**

5.1 All services are to be performed to the satisfaction of the Chief Human Resources Officer, and the **CONTRACTOR** shall own the documents or videos used to conduct the examinations, while the City of San Antonio shall have use of the examinations and candidate responses to administer the examinations, only to determine compliance with the terms of the contract between the **CITY** and the **CONTRACTOR**, and to respond to and resolve any questions regarding the adequacy and accuracy of any examination as prepared or administered under the contract between the parties.”

5.2 The **CITY** and the **CONTRACTOR** acknowledge and agree that all documents and videos containing questions or answers, designated as “test materials”, created or used pursuant to this Contract in the conduct of a promotional exam under the terms of this contract, are considered confidential and the sole property of the **CONTRACTOR**. This is done to assure the accuracy of the promotional examinations administered under this contract and to prevent unfair advantage to candidate(s) by preventing prior access to the test materials used in the examinations. The parties agree to notify each other in the event any test material related to this contract shall become the subject of any request or legal claim for access to any document or video in the possession of the **CITY** or the **CONTRACTOR** for which **CONTRACTOR** has a claim of copyright or proprietary confidentiality.

5.3 Notwithstanding any other provision of this agreement, the parties understand that **CITY** is a governmental entity required to comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) ("TPIA" or the "Act") when responding to records requests made under the Act. Pursuant to the requirements of TPIA, if the **CITY** receives a request for information which **CONTRACTOR** has marked or identified as being confidential, trade secret, commercial, financial or proprietary information, the **CITY** will respond to the request in accordance with the procedures set forth in Section 552.305 of the Act. Specifically, the **CITY** will notify **CONTRACTOR** of its receipt of the request and request an attorney general decision identifying the exception(s) to disclosure believed to apply. The Parties acknowledge that TPIA requires a brief to be submitted to the attorney general explaining why the claimed exceptions apply to the information at issue. **CITY** shall not be obligated to submit the brief supporting those claimed exceptions but may do so. **CONTRACTOR** shall be solely responsible for submitting the brief and the documents at issue to the attorney general.

5.4 Should the attorney general render a decision indicating that all or part of the information must be disclosed, the **CITY** shall be permitted to disclose the information unless Vendor successfully contests the attorney general’s decision in accordance with the requirements of TPIA. Nothing in this agreement shall require the **CITY** to institute or participate in any litigation relating to an open records request for information that **CONTRACTOR** considers to be confidential.

## VI. RECORDS RETENTION

6.1 **CONTRACTOR** 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 **CONTRACTOR** 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, **CONTRACTOR** shall retain the records until the resolution of such litigation or other such questions. **CONTRACTOR** 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 **CONTRACTOR** to return said documents to **CITY** prior to or at the conclusion of said retention.

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

## VII. TERMINATION

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

7.2 Termination without Cause. This Agreement may be terminated by either party upon 30 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.

7.4 Defaults with Opportunity for Cure. Should **CONTRACTOR** 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. **CONTRACTOR** shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If **CONTRACTOR** 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 contractor 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 contractor against **CONTRACTOR**'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 Article XIV. SBEDA
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, **CONTRACTOR** 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 **CONTRACTOR**, or provided to **CONTRACTOR**, hereunder, regardless of storage medium, if so requested by **CITY**, or shall otherwise be retained by **CONTRACTOR** 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 **CONTRACTOR**'s sole cost and expense. Payment of compensation due or to become due to **CONTRACTOR** 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, **CONTRACTOR** 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 **CONTRACTOR** 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 Contractor of any and all right or claims to collect moneys that **CONTRACTOR** 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, **CONTRACTOR** shall cease all operations of work being performed by **CONTRACTOR** 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 **CONTRACTOR** for any default hereunder or other action.

## VIII. NOTICE

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

If intended for City, to:

City of San Antonio  
Attn: Chief Human Resources Officer  
Human Resources Department  
111 Soledad, Suite 123  
San Antonio, TX 78205

If intended for Contractor, to:

Booth Research Group, Inc.  
Attn: Walter S. Booth  
P.O. Box 1899  
Parker, Colorado 80134

**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 certificates of insurance to **CITY's** Fire Department, which shall be clearly labeled "RFP Logistics Optimizations Consulting" 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** Fire Department. No officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.

10.2 **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.

10.3 **CONTRACTOR's** financial integrity is of interest to **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:

TYPES	AMOUNTS
Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <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  f. \$100,000
Business Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
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 insurance coverages required of **CONTRACTOR** herein, and provide a certificate of insurance and endorsement that names **CONTRACTOR** and **CITY** as additional insureds. **CONTRACTOR** 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.

10.5 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). **CONTRACTOR** 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. **CONTRACTOR** shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn.: San Antonio Fire Department  
315 S. Santa Rosa  
Suite 2000  
San Antonio, Texas 78207

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: (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.

10.7 Within five 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 **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, **CITY** shall have the right to order **CONTRACTOR** to stop work hereunder, and/or withhold any payments 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 **CITY** 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 **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 **CONTRACTOR** 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 or 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 **CONTRACTOR**'S activities under this Agreement, including any acts or omissions of **CONTRACTOR**, any agent, officer, director, representative, employee, contractor or subcontractor of **CONTRACTOR**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or 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 CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this **INDEMNIFICATION** 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.

**CONTRACTOR** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **CONTRACTOR** known to **CONTRACTOR** related to or arising out of **CONTRACTOR**'s activities under this Agreement.

11.2 Defense Counsel - **CITY** shall have the right to select or to approve defense counsel to be retained by **CONTRACTOR** in fulfilling its obligation hereunder to defend and indemnify **CITY**, unless such right is expressly waived by **CITY** in writing. **CONTRACTOR** 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 **CONTRACTOR** fails to retain Counsel within such time period, **CITY** shall have the right to retain defense counsel on its own behalf, and **CONTRACTOR** shall be liable for all costs

incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of **CONTRACTOR**, 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 **CONTRACTOR** or any subcontractor under workers' compensation or other employee benefit acts.

## XII. ASSIGNMENT AND SUBCONTRACTING

12.1 **CONTRACTOR** 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 **CONTRACTOR**. **CONTRACTOR**, 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 **CONTRACTOR** intends to use the following subcontractors in the performance of this Agreement: none. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

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

12.4 Except as otherwise stated herein, **CONTRACTOR** 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 the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, **CONTRACTOR** shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor **CONTRACTOR**, 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 **CONTRACTOR** 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 **CONTRACTOR** 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 **CONTRACTOR** shall in no event release **CONTRACTOR** from any obligation under the terms of this

Agreement, nor shall it relieve or release **CONTRACTOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

13.1 **CONTRACTOR** covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **CONTRACTOR** 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 contractors; that the doctrine of *respondiat superior* shall not apply as between **CITY** and **CONTRACTOR**, its officers, agents, employees, contractors, subcontractors and other contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between **CITY** and **CONTRACTOR**. 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 **CONTRACTOR** under this Agreement and that the **CONTRACTOR** has no authority to bind the **CITY**.

### **XIV. SBEDA**

14.1 Non-discrimination. As a condition of entering into this agreement, **CONTRACTOR** represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IIIC.1 of the SBEDA Ordinance. As part of such compliance, **CONTRACTOR** shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall **CONTRACTOR** retaliate against any person for reporting instances of such discrimination.

14.2 **CONTRACTOR** shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace.

14.3 **CONTRACTOR** understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of **CONTRACTOR** from participating in **CITY** contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. **CONTRACTOR** shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

### **XV. CONFLICT OF INTEREST**

15.1 **CONTRACTOR** 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, **CONTRACTOR** 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**. **CONTRACTOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XVI. AMENDMENTS**

16.1 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 **CONTRACTOR**, and subject to approval by the City Council, as evidenced by passage of an ordinance.

## **XVII. SEVERABILITY**

17.1 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**

18.1 **CONTRACTOR** warrants and certifies that **CONTRACTOR** 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 **CONTRACTOR** shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XX. NONWAIVER OF PERFORMANCE**

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either

Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of **CITY**, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **XXI. LAW APPLICABLE**

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

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

#### **XXII. LEGAL AUTHORITY**

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

#### **XXIII. PARTIES BOUND**

23.1 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**

24.1 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 EXHIBITS**

25.1 Each of the Exhibits 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:

#### **XXVI. ENTIRE AGREEMENT**

26.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms

and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI, Amendments.

**XXVII. PROHIBITED CONTRIBUTIONS**

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

27.2 **CONTRACTOR** acknowledges that the **CITY** has identified this contract as high risk.

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

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

**CITY OF SAN ANTONIO**

**CONTRACTOR  
BOOTH RESEARCH GROUP, INC**

\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature)

Printed Name: Sheryl L. Sculley  
Title: City Manager  
Date: \_\_\_\_\_

Printed Name: Walter S. Booth  
Title: President and CEO  
Date: 1/30/13

(Signature) \_\_\_\_\_

Printed Name: Joe Angelo  
Title: Chief Human Resources Officer  
Date: \_\_\_\_\_

Approved as to Form:

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Michael D. Bernard  
City Attorney