RER
6/18/15
Item No. 42

AN ORDINANCE 2015-06-18-0568

AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH INDUSTRIAL/ORGANIZATIONAL SOLUTIONS, INC. TO PROVIDE CONTENT-VALIDATED TESTING SERVICES FOR SAPD AND SAFD EXAMINATIONS FOR A THREE-YEAR TERM BEGINNING JULY 1, 2015, AND ENDING JUNE 30, 2018, WITH ONE RENEWAL TERM OF TWO YEARS AT THE CITY'S OPTION, WITH TOTAL COMPENSATION NOT TO EXCEED $921,640.00.

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WHEREAS, the City requires the services of a consultant to prepare validated, written entry-level examinations for the positions of San Antonio Fire Department (SAFD) firefighter trainee and San Antonio Police Department (SAPD) police cadet; to prepare validated, written promotional examinations for the SAPD positions of detective-investigator, sergeant, lieutenant, and captain; and to administer video-recorded assessment centers for the SAPD positions of lieutenant and captain; and

WHEREAS, the City wishes to enter into a contract with Industrial/Organizational Solutions, Inc. in an amount not to exceed $921,640.00 with a primary term of three years and an optional two-year extension; **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 Industrial/Organizational Solutions, Inc. to provide content-validated testing services for SAPD and SAFD examinations.

SECTION 2. Funding in the amount of $66,730.00 for this Ordinance is available for Fund 11001000, Cost Center 8002140001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget. Additional funding in the amount of $91,750.00 for this Ordinance is contingent upon City Council approval of Fiscal Year 2016's Budget. Additional funding in the amount of $209,420.00 for this ordinance is contingent upon City Council approval of Fiscal Year 2017's Budget. Additional funding in the amount of $252,570.00 for this ordinance is contingent upon City Council approval of Fiscal Year 2018's Budget. Future funding in the amount of $301,170.00 through the renewal term of this contract is contingent upon City Council approval of subsequent fiscal year budgets. Payment not to exceed the budgeted amount is authorized Industrial/Organizational Solutions, Inc. and should be encumbered with a purchase order.

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 18th day of June, 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:	**42 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64A, 64B, 65A, 65B, 66A, 66B, 66C, 67A, 67B, 67C, 68A, 68B, 68C, 69A, 69B, 69C, 69D, 70A, 70B, 70C, 70D, 70E)**
Date:	06/18/2015
Time:	10:00:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a professional services contract with Industrial/Organizational Solutions, Inc., to provide content-validated testing services for SAPD and SAFD examinations for a three year term beginning July 1, 2015 and ending June 30, 2018, with one renewal term of two years at the City's option, with total compensation not to exceed $921,640.00. [Ben Gorzell, Chief Financial Officer; Lori Steward, Interim Human Resources Director]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		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			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

EXHIBIT I

PROFESSIONAL SERVICES AGREEMENT
FOR
ENTRANCE EXAMINATIONS for the SAN ANTONIO POLICE & FIRE DEPARTMENTS and PROMOTIONAL EXAMINATIONS and VIDEO RECORDED ASSESSMENT CENTERS for the SAN ANTONIO POLICE DEPARTMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. 2015-__-__-____ passed and approved on the 18th day of June, 2015 and Industrial/Organizational Solutions, Inc. by and through its Chief Executive Officer, Chad C. Legel, M.S. (hereinafter referred to as "Contractor"), 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.

SECTION 1. DEFINITIONS

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

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

"**Commission**" shall mean the San Antonio Fire Fighters' and Police Officers' Civil Service Commission.

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

"**Director**" shall mean the "Human Resources Director" and/or "Civil Service Director".

SECTION 2. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 1, 2015, and terminate on June 30, 2018.

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

2.3 **CITY** shall have the option to renew this Contract on the same terms and conditions for one (1) additional two-year period. All renewals and/or extensions shall be in writing, signed by the City Manager, or her designee, or the Director of the Human Resources Department, and shall not require additional action by the City Council. All renewals shall be subject to appropriation of funds by the City Council.

SECTION 3. SCOPE OF SERVICES

3.1 **CONTRACTOR** agrees to provide the services described in this Section 3 entitled Scope of Services in exchange for the compensation described in Section 4, Compensation.

A. ALL EXAMINATIONS

CONTRACTOR shall:

I. Prepare all examinations in compliance with:
   a) Chapter 143 of the Local Government Code, with particular reference to Section 143.025, dealing with entrance examinations (http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.143.htm).
   b) The Collective Bargaining Agreement (CBA) by and between the City and the San Antonio Police Officers' Association (http://www.sanantonio.gov/Portals/0/Files/EmployeeInformation/Relations/Commissions/CBA-SAPD.pdf).
   c) The Collective Bargaining Agreement (CBA) by and between the City and the Local 624 International Association of Fire Fighters (http://www.sanantonio.gov/Portals/0/Files/EmployeeInformation/Relations/Commissions/CBA-SAFD.pdf).
   d) The Personnel Rules of The City of San Antonio Fire Fighters' and Police Officers' Civil Service Commission (http://www.sanantonio.gov/Portals/0/Files/EmployeeInformation/Relations/Commissions/Rules-UniformPersonnel.pdf)
   e) 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.

II. Perform all services to the satisfaction of the **DIRECTOR** and provide for exclusive use of the examinations by the **CITY**.

III. Prepare examinations in a manner that ensures the strictest confidentiality regarding all aspects of the process. Primary and active involvement in the scope of work will be by a principal of the **CONTRACTOR**.

IV. Provide litigation consulting and expert testimony as and when needed, to be compensated at a pre-determined hourly rate.

V. Perform all services required and represent 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.

VI. Allow the **CITY** to continue utilizing testing services if necessary beyond the date of any termination or expiration of this agreement. The **CITY** agrees to pay for examinations as and when needed, and compensate the **CONTRACTOR** at the rates listed in Section 4 of this Agreement, for services that comply with the provision of the Agreement. This is to allow for continuity of testing during a transition period in the case a new/additional contractor is selected as a result of a future Request for Proposal process.

B. ENTRY-LEVEL EXAMINATIONS FOR FIREFIGHTER TRAINEE & POLICE CADET

CONTRACTOR shall:

I. Job-Task Analysis: Complete properly structured, updated, and detailed job/task analyses, with updates as deemed necessary. **CONTRACTOR** shall complete each job analysis for each position within forty-five (45) days after receiving a request from the **CITY**.

II. Disparate Impact Study: Compile item analyses and other statistics for disparate impact studies, and submit statistical reports annually, or more often upon request by the **CITY.**

III. Candidate Study Guide: Provide a Study Guide that, at the **CITY**'s request, be made available electronically or via hard-copy to candidates during the application process prior to the exam. The study guide shall contain sample cognitive ability questions (one full-length sample containing 100 unique questions, and one half-length containing 50 unique questions).

IV. Develop Firefighter Trainee Written Examinations:

a) Each examination shall consist of questions relating to the duties of the classification of the position to be filled, and will be completed in a manner that complies with the applicable provisions of Chapter 143 of the Texas Local Government Code and the respective applicable Collective Bargaining Agreement.
b) Prepare criterion and content validated job-related examinations that comply with state and federal guidelines related to testing and employee selection procedures, to include but not limited to, the Texas Human Rights Commission, EEOC, ADA, and U.S. Department of Justice. Each examination will be designed to ensure nondiscrimination against any candidate because of race, color, religion, national origin, gender, sexual orientation, disability, or age.
c) Prepare examinations as requested by the **CITY**, with 100 unique cognitive ability and 150 behavioral assessment questions per examination.
d) Print and bind examinations with copies delivered to the **CITY** in a sealed container in amounts determined by the **CITY**. The requested printed exam quantity is generally equal to or greater than the eligible number of applicants.
e) Examinations, examination instructions, and answer sheets shall be labeled in one sealed envelope, and the visualization/memorization portion in a separately labeled and sealed envelope, each of which shall be placed inside the exam packet, and delivered to a location determined by the **CITY** no later than 10 days prior to each examination.
f) Responsible for grading, providing a draft eligibility list no later than 15 days after receipt of exam answer sheets from the **CITY**, and providing an adverse impact ratio report to the **CITY** after the eligibility list has been certified by the **COMMISSION**.
g) Some subsequent exams may contain a pre-determined number of non-unique items depending on circumstances, and upon prior discussion with and written approval by the **CITY**.
h) Additional testing/logistical options may be devised at the **CITY**'s request.

V. Develop Police Cadet Computer Based Examinations:

a) Each examination shall consist of questions relating to the duties of the classification of the position to be filled, and will be completed in a manner that complies with the applicable provisions of Chapter 143 of the Texas Local Government Code and the respective applicable Collective Bargaining Agreement.

b) Prepare criterion and content validated job-related examinations that comply with state and federal guidelines related to testing and employee selection procedures, to include but not limited to, the Texas Human Rights Commission, EEOC, ADA, and U.S. Department of Justice. Each examination will be designed to ensure nondiscrimination against any candidate because of race, color, religion, national origin, gender, sexual orientation, disability, or age.
c) Prepare examinations as requested by the **CITY**, with 100 unique cognitive ability and 150 behavioral assessment questions per examination.
d) Create a bank of test questions every six (6) months for the purpose of facilitating online testing on an as-needed basis. **CONTRACTOR** shall manage and maintain an online testing site, ensure test site security, and confirm that candidate test intervals are no less than six (6) months.
e) Examinations will utilize computer based scoring to be completed at the time of examination.
f) Prepare and provide new examinations to the **CITY** no less than 10 days prior to the current examination's expiration. Testing intervals shall be September 1 – February 28; and March 1 – August 31 of each calendar year.
g) Any calibration or scaling of new tests will be completed by the **CONTRACTOR** within 10 days of the administration of 75 completed examinations by test applicants.
h) Pricing for Police Cadet Computer Based Examinations is inclusive of all costs (software, installation, licensing, maintenance, etc.), and shall be for unlimited use of exams during each six (6) month testing interval.
i) Upon request, the **CONTRACTOR** shall provide a written entrance exam at a quantity requested by the **CITY** within five (5) business days of the request. Questions from the written version shall be drawn from the current bank of computer based examination questions.
j) Additional testing/logistical options may be devised at the **CITY**'s request.

C. WRITTEN SAPD PROMOTIONAL EXAMINATIONS

CONTRACTOR shall:

I. Job-Task Analysis: Complete a properly structured, detailed job/task analysis for the positions of Detective-Investigator, Sergeant, Lieutenant, and Captain in SAPD. **CONTRACTOR** shall complete each job analysis for each position within forty-five (45) days after receiving a request from the **CITY**.

II. Disparate Impact Study: Compile item analyses and other statistics for disparate impact and submission of statistical reports upon request.

III. Develop Written Examinations:
a) Each written examination shall consist of questions relating to the duties of the classification of the position to be filled and will be completed in a manner that complies with the applicable provisions of Chapter 143 of the Texas Local Government Code and the respective applicable Collective Bargaining Agreement.
b) Consult with the Study Materials Committee, and later the Chief, to assure support from the job analysis throughout the materials selection process.
c) Prepare a master examination for each rank with 100 multiple choice questions per examination, and provide scoring keys for each of the examinations constructed. Deliver to the **DIRECTOR**, no later than 10 days prior to the date of each examination, a sufficient number of individually numbered examination booklets for all candidates expected to sit for

the exam. Examination booklets must be provided in a sealed package or container to be opened in the presence of all candidates and an answer key must accompany the booklets.

d) Develop a minimum passing score based on statistical validity of the test, if different from seventy percent (70%) out of a possible one hundred percent (100%).

e) Develop questions that are unique to each particular examination.

IV. Civil Service Appeals Hearing Support: Prepare for an on-site defense at an appeals hearing for any examination questions which may be appealed to the **COMMISSION** during the five (5) day review period. This will comprise the creation of briefing materials that shall include 10 binders/booklets containing the following: 1) all appealed questions, 2) the portion of study material containing the source from which the answer comes, and 3) a (no more than one page) summary of statistics of answers selected for each question appealed. There is normally one appeals hearing per rank exam.

D. SAPD VIDEO RECORDED ASSESSMENTS

CONTRACTOR shall:

I. Prepare a validated job-related assessment cadre using a variety of exercises that may include: In-Basket; Problem Solving/analysis; Oral Resumes/Structured Interviews; Leaderless Group Presentation; Role Playing; Memo/Report Writing; Oral Presentation/Plan Preparation; Staff Meeting; Special Event/Operations; and others as they are established and determined to be reasonably valid predictors of job related characteristics. Not all of the exercises are required, but may be selected from or combined into one or more exercises that are best suited for that particular rank with and as recommended by the Study Materials Committee.

II. Obtain input on the types of assessment center exercises from the Study Materials Committee, with final decision from the Police Chief, prior to developing the content of such exercises.

III. Prepare an on-site administration of up to three (3) video recorded or in-person candidate orientation sessions per rank, as requested by the **CITY**, which may be held at varying times at least one month before the written examination (sessions may be held over multiple days).

IV. Develop questions that are unique to each particular examination.

V. Principal and active involvement in the scope of work by a principal of the firm, and preparation of the assessment in such a manner as to ensure the strictest confidentiality regarding all aspects of the process.

VI. Recruit and select assessors in compliance with the criteria set forth in the SAPD Collective Bargaining Agreement (Article 11, Section 3.F).

VII. Prepare, staffing and complete assessor scoring of the video recorded assessment, to include making site, hotel, and travel arrangements for **CONTRACTOR** staff and assessors, if needed.

VIII. Prepare, staff, and complete assessor scoring for candidate appeals of the video recorded assessment, to include making site, hotel, and travel arrangements for **CONTRACTOR** staff and assessors, if needed.

COORDINATION WITH THE CITY

3.2 **CITY** agrees to provide sufficient cooperation with respect to any data collection steps during the job analysis and test development phases. **CITY** will coordinate diverse subject matter expert (SME) panels, interview schedules and identify interview locations as necessary.

A. **CITY** agrees to prepare and post the examination announcements and registration lists. The **CITY** will provide the **CONTRACTOR** with as much advanced noticed of upcoming examinations as is known.

B. **CITY** agrees to coordinate and acquire use of facilities in which to hold written examinations.

C. **CITY** agrees to provide administrative staff support during written examinations.

D. **CITY** agrees to develop, approve and distribute eligibility lists/written examination scores.

3.3 **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.

3.4 **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.

3.5 All work performed by **CONTRACTOR** hereunder shall be performed to the satisfaction of **DIRECTOR**. The determination made by the **DIRECTOR** 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 **DIRECTOR**. **CITY** shall have the right to terminate this Agreement, in accordance with Section 7. Termination, in whole or in part, should **CONTRACTOR**'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.

SECTION 4. COMPENSATION TO CONTRACTOR

4.1 In consideration of **CONTRACTOR**'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 **CONTRACTOR** an amount not to exceed $921,640 dollars as total compensation for the three (3) year Agreement period and one (1) two-year additional optional period, to be paid to **CONTRACTOR** as services are requested and rendered as per Attachment A, Pricing Schedule.

4.2 Additionally, **CITY** shall have the option to require, and **CONTRACTOR** agrees that additional promotional examinations and video recorded assessments for each rank be prepared and conducted by **CONTRACTOR**, if requested. Payment for such examinations shall be on the same terms and conditions set out in Section 4.1, above. The services required and terms of payment for any such additional examinations shall be committed to writing and signed by the City Manager, or her designee, or the **DIRECTOR**, and shall not require action by the City Council so long as the cost of the additional services are paid from previously appropriated funds.

4.3 **CITY** agrees to make payment to **CONTRACTOR** based upon mutually agreed schedule at the onset of work with one-third at initiation, one-third at project midpoint, and one-third at completion, provided such

work is approved by the **DIRECTOR**. Payment shall be made for services as to each item listed above at the respective rate indicated in Attachment A, Pricing Schedule.

4.4 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. Notwithstanding the forgoing, **DIRECTOR** may execute an amendment to this contract without additional City Council approval, to increase the total compensation payable to **CONTRACTOR** hereunder if **CITY** requires **CONTRATOR** to perform additional promotional examinations and assessments beyond the quantities stated in Attachment A, Pricing Schedule, so long as sufficient funds have been appropriated for the increased cost.

4.5 **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 Westchester, Illinois or the nearest airport located near Westchester, Illinois, plus lodging and per diem.

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

> The aggregate service fee for each examination or assessment center conducted under the terms of this Agreement will be reduced by 25% if necessary based on a performance audit of that examination or assessment center if timelines 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 10% if more than two (2) questions are rejected by the **COMMISSION** because the question was not drawn from the specified study materials, the answer key was in error, or the question was rejected due to a typographical error.

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

4.8 Despite **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 this Agreement execution or extending beyond the expiration date of this Agreement.

4.9 Payment will be made to **CONTRACTOR** 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 **CONTRACTOR**, for the payment of any monies or the provision of any goods or services.

SECTION 5. INTELLECTUAL PROPERTY

5.1 **CONTRACTOR** must abide by the following regarding intellectual property rights:

> **CONTRACTOR** shall pay all royalties and licensing fees. **CONSTRACTOR** shall hold **CITY** harmless and indemnify **CITY** from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if **CONTRACTOR** has reason to believe

that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to **CITY**.

5.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, **CONTRACTOR** will immediately:

Either:

1. obtain, at **CONTRACTOR'S** sole expense, the necessary license(s) or rights that would allow **CITY** to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,

2. alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

3. reimburse **CITY** for any expenses incurred by **CITY** to implement emergency backup measures if **CITY** is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

CONTRACTOR further agrees to:

1. assume the defense of any claim, suit, or proceeding brought against the **CITY** for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,

2. assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

3. indemnify the **CITY** against any monetary damages and/or costs awarded in such suit.

5.3 **CONTRACTOR** is given sole and exclusive control of all negotiations relative to the settlement thereof, but that **CONTRACTOR** agrees to consult with the City Attorney of the **CITY** during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the **CITY**, provided that:

the Software or the equipment is used by the **CITY** in the form, state, or condition as delivered by **CONTRACTOR** or as modified without the permission of **CONTRACTOR**, so long as such modification is not the source of the infringement claim,

the liability claimed shall not have arisen out of the **CITY**'s negligent act or omission, and the **CITY** promptly provide **CONTRACTOR** with written notice within 15 days following the formal assertion of any claim with respect to which the **CITY** asserts that **CONTRACTOR** assumes responsibility under this section.

SECTION 6. OWNERSHIP OF DOCUMENTS

6.1 Ownership and exclusive use of the examinations by the **CONTRACTOR**.

6.2 All services are to be performed to the satisfaction of the **DIRECTOR**, and the **CONTRACTOR** shall own the documents or videos used to conduct the examinations, while the **CITY** shall have use of the examinations and candidate responses to administer the examinations, only to determine compliance with the

terms of the contract between **CITY** and **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.

6.3 **CITY** and **CONTRACTOR** acknowledge and agree that all documents and videos containing questions or answers, designated as "test materials", created or used pursuant to this Agreement 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. 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 **CITY** or **CONTRACTOR** for which **CONTRACTOR** has a claim of copyright or proprietary confidentiality.

6.4 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. **CONTRACTOR** shall not be obligated to submit the brief supporting those claimed exceptions. **CONTRACTOR** shall be solely responsible for submitting the brief and the documents at issue to the attorney general.

6.5 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 **CONTRACTOR** successfully contests the attorney general 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.

SECTION 7. RECORDS RETENTION

7.1 **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.

7.2 **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.

7.3 **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.

SECTION 8. TERMINATION

8.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Section 2. Term, or earlier termination pursuant to any of the provisions hereof.

8.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 days written notice, which notice shall be provided in accordance with Section 9. Notice.

8.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Section 9, 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:

8.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Section 12. Assignment and Subcontracting.

8.4 Defaults With Opportunity for Cure. Should **CONTRACTOR** default in the performance of this Agreement in a manner stated below in this same section, 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 Section 9. 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.

8.4.1 Failure to comply with the terms and conditions stated in Section 14. SBEDA
8.4.2 Bankruptcy or selling substantially all of company's assets
8.4.3 Failing to perform or failing to comply with any covenant herein required
8.4.4 Performing unsatisfactorily

8.5 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.

8.6 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 Section 7. 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.

8.7 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.

8.8 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.

8.9 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.

SECTION 9. NOTICE

9.1 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: Director
Human Resources Department
111 Soledad, Suite 100
San Antonio, TX 78205

If intended for **CONTRACTOR**, to:

I/O Solutions, Inc.
Attn: Chad Legel
1127 S. Mannheim Rd., Ste. 203
Westchester, IL 60154

SECTION 10. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, **CONTRACTOR** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the **CITY**'s Human Resources Department, which shall be clearly labeled "**Written Promotional Examinations & Promotional Video Recorded Assessment Centers for the Police Department**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the

signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the **CITY**'s Human Resources 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 Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY**'s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

10.3 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	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 Form)	$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 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the **CITY**, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). **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 10 days of the requested change. **CONTRACTOR** shall pay any costs incurred resulting from said changes.

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

10.5 **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, 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;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**.

- Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.6 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.

10.7 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.

10.8 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.

10.9 It is agreed that **CONTRACTOR'S** insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

SECTION 11. 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.

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. CONTRACTOR shall advise the CITY in writing within 24 hours 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 and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.3 <u>Defense Counsel</u> - 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.

11.4 <u>Employee Litigation</u> – 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 worker's compensation or other employee benefit acts.

SECTION 12. 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 Section 7, 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.

SECTION 13. 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, **CONTRACTOR**s, subcontractors and **CONTRACTOR**s; that the doctrine of *respondent superior* shall not apply as between **CITY** and **CONTRACTOR**, its officers, agents, employees, **CONTRACTOR**s, subcontractors and **CONTRACTOR**s, 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**.

SECTION 14. SBEDA

14.1 SBEDA Program

The **CITY** has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the **CITY**'s Economic Development (EDD) website page and is also available in hard copy form upon request to the **CITY**. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are

governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the **CITY** pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

14.2 Definitions

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

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

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

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

subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the **CONTRACTOR** and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

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

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one

percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

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

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

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

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

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

Payment – dollars actually paid to **CONTRACTOR**s and/or Subcontractors and vendors for **CITY** contracted goods and/or services.

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

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

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

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

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

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

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

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

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

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

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

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

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

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

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

payment under **CITY** contracts due to the **CITY**'s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

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

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

14.3 SBEDA Program Compliance – General Provisions

As **CONTRACTOR** acknowledges that the terms of the **CITY**'s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the **CITY**'s SBEDA Policy & Procedure Manual are in furtherance of the **CITY**'s efforts at economic inclusion and, moreover, that such terms are part of **CONTRACTOR**'s scope of work as referenced in the **CITY**'s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. **CONTRACTOR** voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the **CITY**. Without limitation, **CONTRACTOR** further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

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

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

14.3.4 **CONTRACTOR** shall immediately notify the SBO, in writing on the Change to Utilization Plan

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

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

14.3.6 **CONTRACTOR** shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

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

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

14.4 SBEDA Program Compliance – Affirmative Procurement Initiatives

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

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

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

14.5 Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the **CONTRACTOR** represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the **CITY**'s Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, **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 the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the **CITY**'s Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in **CITY** contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. **CONTRACTOR**'s certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the **CITY** pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. **CONTRACTOR** shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to **CITY** contracts.

14.6 Prompt Payment

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

14.7 Violations, Sanctions and Penalties

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

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

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

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

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

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

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

14.7.6 Suspension of contract;

14.7.7 Withholding of funds;

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

14.7.9 Refusal to accept a response or proposal; and

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

SECTION 15. 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 is has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the **CITY**'s Ethics Code.

SECTION 16. 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.

SECTION 17. 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.

SECTION 18. 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.

SECTION 19. 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.

SECTION 20. 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 Section 16. 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.

SECTION 21. 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.

SECTION 22. 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.

SECTION 23. 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.

SECTION 24. 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.

SECTION 25. ENTIRE AGREEMENT

25.1 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 Section 16, Amendments.

SECTION 26. PROHIBITED CONTRIBUTIONS

26.1 **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.

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

26.3 **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 signer 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** **INDUSTRIAL/ORGANIZATIONAL SOLUTIONS, INC.**
_____ *(Signature)*	_____ *(Signature)*
Printed Name: **Sheryl Sculley** Title: **City Manager** Date: _____	Printed Name: **Chad C. Legel** Title: **President and CEO** Date: 6-11-15

(Signature) _____

Printed Name: Lori Steward
Title: Interim Human Resources Director
Date: _____

Approved as to Form:

_____
Martha Sepeda
City Attorney