

AN ORDINANCE

2011-02-03-0093

**AUTHORIZING A CONTRACT WITH 360TRAINING.COM, INC. TO PROVIDE AN ONLINE FOOD HANDLER / FOOD MANAGER CERTIFICATION PROGRAM FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT.**

\* \* \* \* \*

**WHEREAS**, in May 2008, City Council passed changes to the City Code requiring food establishments receiving a certain threshold of demerits, a suspension, or repeat critical violations to train all food handlers in food safety within a two month period, hire only certified food handlers within this period and maintain certification for all current or new employees for a period of six months; and

**WHEREAS**, additionally, all licensed food establishments must have a certified food manager on duty during all hours of operation; and

**WHEREAS**, this ordinance authorizes the execution of a single source revenue contract with 360training.com, Inc., an Austin based online training organization, to provide all resources necessary to deliver, administer, and support an online food handler/food manager certificate program; and

**WHEREAS**, these services facilitate the issuance of food handler and food manager certificates at no additional cost to the City; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee or the Director of the San Antonio Metropolitan Health District or his designee, is hereby authorized to execute a contract with 360training.com, Inc. to provide an online food handler / food manager certification program for the San Antonio Metropolitan Health District. A copy of the contract in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000 per the table below.

Description	General Ledger	Internal Order
Food Handler	4407205	236000000012
Food Manager	4201221	236000000012

**SECTION 3.** The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, 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.

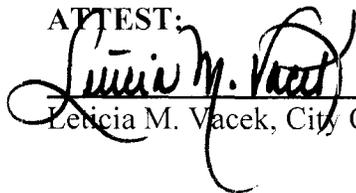
**SECTION 4.** This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 3<sup>rd</sup> day of February, 2011.

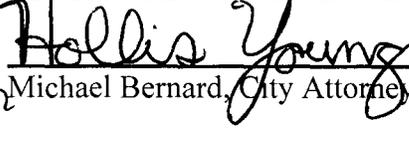


M A Y O R  
Julián Castro

ATTEST:

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

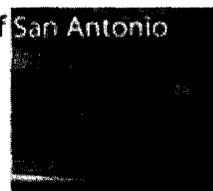
APPROVED AS TO FORM:

  
\_\_\_\_\_  
for Michael Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 19

<b>Name:</b>	6, 7, 8, 9, 12, 13, 15A, 15B, 15C, 15D, 15E, 15F, 17A, 17B, 17C, 19, 20A, 20B, 20C, 20D						
<b>Date:</b>	02/03/2011						
<b>Time:</b>	10:34:53 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a contract with 360training.com, Inc. to provide an online food handler / food manager certification program for the San Antonio Metropolitan Health District. [Sharon De La Garza, Assistant City Manager; Charles E. Pruski, Interim Deputy Public Health Director, Health]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x

**SERVICES CONTRACT  
FOR**

**ONLINE FOOD HANDLER/FOOD MANAGER CERTIFICATION PROGRAM**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to Ordinance \_\_\_\_\_ passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 2011 and 360training.com, Inc. by and through Michael Mariano, its CFO (“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.

**I. DEFINITIONS**

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

“City” is defined in the preamble of this Contract and includes its successors and assigns.

“Contractor” is defined in the preamble of this Contract and includes its successors.

“Director” means the Director of the San Antonio Metropolitan Health District or his/her designee.

“Food handler” shall be defined in accordance with the San Antonio City Code.

“Food handler certificate” shall mean a food handler certificate that satisfies the requirements of the San Antonio City Code.

“Food handler course” shall mean a course that satisfies the requirements of the Texas Department of State Health Services (TDSHS) and the San Antonio Metropolitan Health District for food handler certification.

“Food manager” shall be defined in accordance with the San Antonio City Code.

“Food manager certificate” shall mean a food manager certificate that satisfies the requirements of the San Antonio City Code.

“Food manager course” shall mean a course that satisfies the requirements of the TDSHS and the San Antonio Metropolitan Health District for food manager certification.

“Students” shall mean individuals who have satisfactorily completed and passed Contractor’s food manager or food handler course in accordance with state and local requirements.

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on February 1, 2011 and terminate on January 31, 2014.

2.2 The City shall have the option to renew this agreement for an additional two (2) year period.

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

## **III. SCOPE OF SERVICES**

### **3.1 CONTRACTOR OBLIGATIONS:**

3.1.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services.

3.1.2 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should Contractor’s work not be satisfactory to Director.

3.1.3 Contractor shall provide all resources for the delivery, administration and support of the services set forth herein. An online e-commerce site will be built, hosted, maintained and supported by Contractor in order to provide the services herein.

3.1.4 Contractor shall provide each student who successfully completes Contractor’s food handler or food manager online course with a digitally-produced certificate of completion. Each certificate will include student identification number and expiration date.

3.1.5 Contractor shall charge ten (\$10.00) dollars per each student registration for its online food handler course and shall charge ninety (\$90.00) dollars per each student registration for its online food manager course. In addition, Contractor shall charge each student who applies for a City food manager or food handler certificate a fee of fifteen (\$15.00) dollars.

3.1.6 Contractor shall upon application and payment of the required fee for a food manager or food handler's certificate fee by students, provide a City food manager or food handler certificate to students who have successfully completed and passed Contractor's food manager or food handler course.

3.1.7 Contractor will work with the City to design a food manager and food handler certificate which can be printed by the student. The food manager and food handler certificate shall be in forms that meet the requirements as set out in the San Antonio City Code.

3.1.8 Contractor shall collect fees for the City food manager and food handler certificates on behalf of the City and remit fees collected in accordance with Article IV. Contractor shall also remit to City revenue sharing fees per course completed in accordance with Article IV.

3.1.9 Contractor shall allow City complete access to online records of students who have obtained City food manager and food handler certificates from Contractor. Contractor shall provide the City with a password for access to the Contractor's website where the City can verify successful completion of the course, application for and issuance of City food manager and food handler certificates as well as the expiration date of the certificates.

3.1.10 Contractor will also provide City monthly reports in hard copy and digital format of food manager and food handler certificates issued every month. The reports shall contain the following information: name, address, height, gender, date of birth, registration date of the course, course completion date, date when the course was passed and the date of issuance and expiration of the City food manager or food handler certificate.

3.1.11 Contractor agrees that City's website content and logos shall remain with City. Contractor shall not make any use of City's logos unless it is for the purpose of conducting the services therein.

3.1.12 Contractor must be licensed by the TDSHS to administer a certified food manager exam and food handler course. Contractor shall notify City immediately should its food manager or food handler course accreditation status change with the TDSHS.

3.1.13 Contractor shall have its food manager and food handler courses available online in both English and Spanish.

3.1.14 Contractor shall have all food manager and food handler course materials written for students with an 8th-grade reading level.

3.1.15 If a food manager student takes the online course and does not receive a passing grade on the final exam, Contractor shall not charge any additional fees if the student wishes to retake the course and final exam.

**3.2 CITY OBLIGATIONS:**

3.2.1 The City will place a link supplied by Contractor on the City’s San Antonio Metropolitan Health District (SAMHD) website.

3.2.2 The City will provide information to the Contractor regarding requirements for the Contractor’s services under this agreement.

**IV. COMPENSATION**

4.1 Contractor shall remit fifteen (\$15.00) dollars to the City for each student who obtains a City food handler or food manager certificate from the Contractor. Fees collected for the City through Contractor’s online store will be remitted monthly to the City of San Antonio at the beginning of each month, to be received by the City by no later than the 15th of each month.

4.2 In addition to the fees remitted under section 4.1 above, Contractor shall remit to City revenue sharing fees according to the following amounts for each student completing Contractor’s online food handler and food manager course during the term of this agreement:

Number of Student s completing the course	Food Handler (per course) Food Manager (per course)
Students Completing Course 0-499	Food Handler: \$1.00 /per course Food Manager: \$9.00/per course
Students Completing Course 500-999	Food Handler: \$2.00/per course Food Manager: \$18.00/per course
Students Completing Course 1,000-1,499	Food Handler: \$3.00/per course Food Manager: \$27.00/per course
Students Completing Course 1,500-2,499	Food Handler:\$4.00/per course Food Manager: \$39.00/per course
Students Completing Course 2,500+	Food Handler: \$5.00/per course Food Manager: \$45.00/per course

Fees collected for the City through Contractor’s online store under section 4.2 shall be remitted monthly to the City of San Antonio at the beginning of each month, to be received by the City by no later than the 15th of each month.

4.3 No fees or expenses of Contractor shall be charged by Contractor nor be payable by City.

- 4.4 City shall not pay, and prices shall not include, federal taxes, nor State of Texas limited sales excise and use taxes, nor out-of state taxes, since City is exempt from payment of such taxes. An exemption certificate will be signed by City upon request by Contractor.
- 4.5 Final acceptance of work products and services require approval by City. The approval official shall be Director.

#### **V. CONFIDENTIALITY**

- 5.1 In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (Including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other Information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information, is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

#### **VI. RECORDS RETENTION AND RIGHT TO AUDIT**

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said

retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

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

## **VII. TERMINATION**

- 7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. City may terminate this Contract upon 30 calendar days' written notice for convenience.
- 7.3 Termination For Cause. City may terminate this Contract upon written notice for any material breach by Contractor.
- 7.4 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 Contract shall automatically terminate as of the effective date of such prohibition.
- 7.5 Upon the effective date of expiration or termination of this Contract, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Contract.
- 7.6 Termination not sole remedy. In no event shall City's action of terminating this Contract, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

## **VIII. NOTICE**

- 8.1 Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract 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  
San Antonio Metropolitan Health District  
332 W. Commerce, Suite 307  
San Antonio, TX 78205

If intended for Contractor, to: 360training.com, Inc.  
Attn: Kevin Urbanowicz  
13801 Burnet Rd., Suite 100  
Austin, TX 78727

### **IX. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

9.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

9.2 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

9.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

9.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

9.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Contractor’s bid for this project Agreement, attached hereto and incorporated herein as “Attachment A”.

9.6 For this Agreement, the Parties agree that:

9.6.1 The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and

9.6.2 The failure of CONTRACTOR or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

9.6.3 Failure of CONTRACTOR or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

9.6.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONTRACTOR’s SBEDA Plan (“Attachment A”) shall constitute a material breach of the SBEDA Program and this Agreement.

9.6.5 CONTRACTOR shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Attachment A”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONTRACTOR to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

9.7 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

9.7.1 Failure of CONTRACTOR to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or

9.7.2 Modification or elimination by CONTRACTOR of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or

9.7.3 Termination by CONTRACTOR of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or

9.7.4 Participation by CONTRACTOR in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

9.8 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONTRACTOR materially breaches the requirements of the SBEDA Program:

9.8.1 Terminate this Agreement for default;

9.8.2 Suspend this Agreement for default;

9.8.3 Withhold all payments due to the CONTRACTOR under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

9.8.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONTRACTOR under the Agreement.

9.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

9.9 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

9.10 The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

9.11 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

9.12 Special Provisions for Extension of Agreements. In the event the CITY extends this Agreement without a competitive Bid or Proposal process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

9.12.1 a SBEDA Utilization Goal for the extended period; and

9.12.2 a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONTRACTOR does not meet the SBEDA Utilization Goal; and

9.12.3 the required minimum Good Faith Efforts outreach attempts that CONTRACTOR shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONTRACTOR entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

(i) subject CONTRACTOR to any of the remedies listed above; and/or

(ii) result in a new bid or proposal request of the Agreement that was considered for extension.

## X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the San Antonio Metropolitan Health District, which shall be clearly labeled "*Online Food Handlers/Food Manager Certification Program*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's

signature, 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 San Antonio Metropolitan Health District. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

10.3 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 f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage       f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

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: San Antonio Metropolitan Health District  
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 insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, 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 and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

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

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

## **XI. INDEMNIFICATION**

**11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it's officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. 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 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City

approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. 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 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

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

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City Council, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

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

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

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part

of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

13.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and contractors; that the doctrine of *respondeat superior* shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and 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 Contract and that the Contractor has no authority to bind the City.

### **XIV. CONFLICT OF INTEREST**

14.1 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.

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

### **XV. AMENDMENTS**

15.1 Except where the terms of this Contract 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.

#### **XVI. SEVERABILITY**

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

#### **XVII. LICENSES/CERTIFICATIONS**

17.1 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.

#### **XVIII. COMPLIANCE**

18.1 Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

#### **XIX. NONWAIVER OF PERFORMANCE**

19.1 Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by Director, as described in Article XV. 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.

**XX. LAW APPLICABLE**

20.1 THIS CONTRACT 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.

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

**XXI. LEGAL AUTHORITY**

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

**XXII. PARTIES BOUND**

22.1 This Contract 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.

**XXIII. CAPTIONS**

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

**XXIV. INCORPORATION OF EXHIBITS**

24.1 Each of the Exhibits listed below is an essential part of the Contract, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below: Attachment A.

**XXV. ENTIRE AGREEMENT**

25.1 This Contract, together with 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 Contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XV. Amendments.

**EXECUTED** and **AGREED** to as of the dates indicated below. This document may be executed in multiple copies, each of which shall constitute an original.

**CITY OF SAN ANTONIO**

**CONTRACTOR**

360training.com, Inc.



Name: Charles E. Pruski  
Title: Interim Deputy Health Director  
Date: \_\_\_\_\_

Name: Michael Mariano  
Title: CFO  
Date: 1/31/2011

Approved as to Form:

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

**LIST OF SUBCONTRACTORS/SUPPLIERS**

The Bidder/Proposer, 360 INTERNATIONAL as part of the procedure for the submission of bid/proposals on a project known as Online Food Handler and Food Manager Certification submits the following list of subcontractors/suppliers for proposed subcontracting areas (use additional sheets if necessary) to be used in the performance of work to be done on said project.

NAME OF SUBCONTRACTOR/SUPPLIER	SBE-MBE-WBE-AABE CERTIFICATION NO.	PERCENT AND DOLLAR AMOUNT OF SUBCONTRACT
<u>N/A</u>		

The following section is to be completed if the contract (Project) is for less than \$200,000. Please list subcontracting solicitations to all SBE-MBE-WBE-AABE contractors for participation on project. If none, explain (exclude successful bidders listed above). Use additional sheets if necessary. The contractor is expected to solicit participation on subcontracts from available MBE-WBE-AABE-SBEs under this contract.

NAME OF COMPANY PERFORMING WORK	SBE-MBE-WBE-AABE CERTIFICATION NO.	REASON FOR REJECTION
<u>N/A</u>		

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Office at (210) 207-3900 for information and details on how subcontractors/suppliers may obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of International and Economic Development and Director of the appropriate contracting department (through the proposal of the Request for Approval of Change to Affirmed List of Subcontractors/Suppliers).

**AFFIRMATION**

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

NAME AND TITLE OF AUTHORIZED

OFFICIAL: KEVIN J. BRONOWICZ ACCOUNT EXEC

SIGNATURE: *Kevin Bronowicz*

DATE: 12-21-10

List of Subcontractors Rev. 10/12/04