

AN ORDINANCE 2014 - 02 - 06 - 0077

AUTHORIZING AN AGREEMENT WITH MGT OF AMERICA, INC. TO PROVIDE PREPARATION OF COST ALLOCATION PLANS AND INDIRECT COST RATE SERVICES FOR THE CITY OF SAN ANTONIO FINANCE DEPARTMENT, FOR A TOTAL AMOUNT NOT TO EXCEED \$211,500.00 FOR A 3-YEAR TERM BEGINNING FEBRUARY 6, 2014 AND ENDING DECEMBER 31, 2016.

* * * * *

WHEREAS, a Request For Proposals (“RFP”) seeking proposals for preparation of cost allocation plans and indirect cost rate services was issued by City Staff on October 10, 2013; and

WHEREAS, on November 11, 2013, three proposals were received in response to the RFP; and

WHEREAS, an evaluation team comprised of various members of City Staff has evaluated the Proposals received and has recommended that the Proposal of MGT of America, Inc. be accepted, and that the City enter into an agreement with this company for a three year term for an amount not to exceed \$211,500.00; and

WHEREAS, the City Council, upon consideration of and deliberation on such recommendation, desires to accept City Staff’s recommendation; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of an agreement with MGT of America, Inc. that provides for preparation of cost allocation plans and indirect cost rate services for a three year term for an amount not to exceed \$211,500.00, are hereby approved.

The City Manager, or her designee, or the Director of Finance, or his designee, is hereby authorized to enter into and execute the agreement, under terms and conditions substantially in accordance with those set forth in **Attachment I** to this Ordinance.

SECTION 2. Funding in the amount of \$77,800.00 for this ordinance is available for Fund 11001000, Cost Center 8002060053 and General Ledger 5201040, as part of the Fiscal Year 2014 Budget.

SECTION 3. Future funding through the term of this agreement is contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 4. Payment not to exceed the budgeted amount is authorized to MGT of America, Inc. and should be encumbered with a purchase order.

SECTION 5. 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 6. This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED and APPROVED this 6th day of February, 2014.



M A Y O R
Julián Castro

ATTEST:



Leticia M. Vadek, City Clerk

APPROVED AS TO FORM:



Robert F. Greenblum, City Attorney

| | |
|---------------------|---|
| Agenda Item: | 15 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 14, 15) |
| Date: | 02/06/2014 |
| Time: | 10:38:18 AM |
| Vote Type: | Motion to Approve |
| Description: | An Ordinance authorizing an agreement with MGT of America, Inc. to provide preparation of cost allocation plans for the City of San Antonio Finance Department, for a total amount not to exceed \$211,500.00 for a 3 year term, beginning February 6, 2014 and ending on December 31, 2016. [Ben Gorzell, Jr., Chief Financial Officer; Troy Elliott, Director of Finance] |
| Result: | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|-------------------|-------------|-------------|-----|-----|---------|--------|--------|
| Julián Castro | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | | |
| Ivy R. Taylor | District 2 | x | | | | | |
| Rebecca Viagran | District 3 | | x | | | | x |
| Rey Saldaña | District 4 | | x | | | x | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Joe Krier | District 9 | | x | | | | |
| Michael Gallagher | District 10 | | x | | | | |

A T T A C H M E N T I

COST ALLOCATION PLANS AND INDIRECT COST RATES CONTRACT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Contract is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas home-rule municipal corporation acting by and through its City Manager or her designee, pursuant to Ordinance No. 2014-02-06-_____ passed and approved on February 6, 2014 and **MGT OF AMERICA, INC.**, a corporation chartered under the laws of the State of Florida (hereinafter referred to as "**CONTRACTOR**")

WHEREAS, CITY incurs both direct and indirect costs in the performance of its responsibilities; and

WHEREAS, direct costs are costs that can be specifically or readily identified with a specific cost objective or program; while indirect costs are costs necessary for the effective and efficient operation of City programs, which cannot be directly assigned to one service, such as citywide central services and departmental administration and support; and

WHEREAS, CITY annually has a need for the preparation of two central services allocation plans:

- the Full-Cost Central Services Cost Allocation Plan, which is utilized to identify and recover central services costs from non-general fund sources other than grant funded programs; and
- the OMB-87 Central Services Cost Allocation Plan, which is utilized to identify and recover central services costs from programs funded by Federal and State funds; and

WHEREAS, CITY also annually prepares an Indirect Cost Rate Proposal, which is used in recovering indirect costs for each City department through the application of these rates, which are developed in accordance with OMB-87; and

WHEREAS, CITY has gone through an extensive selection process and issued a Request For Proposal ("Request For Proposal") and through such process has chosen **CONTRACTOR** to provide the services described herein for a three year period to include the cost allocation plans and indirect cost rates for the fiscal years ending September 30, 2014, 2015, and 2016, with two (2) one (1) year options to extend the Contract, with Finance Director approval, for fiscal years 2017 and 2018; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, 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

- 1.1 For purposes of this Contract, the word **"CONTRACTOR"** as used herein shall refer to **MGT OF AMERICA, INC.**
- 1.2 **"OMB"** means the United States Office of Management and Budget.
- 1.3 **"OMB Circular A-87"** is the document issued by the OMB that establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).
- 1.4 **"Plans"** means the Cost Allocation Plans and Indirect Cost Rates.

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, for each fiscal year of this Contract, **CONTRACTOR** will execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CONTRACTOR'S** responsibility for each year's Plans, and the total compensation for each year's Plans that **CONTRACTOR** will be paid, consistent with the provisions contained in Article V.
- 2.2 **CITY** and **CONTRACTOR** mutually agree that each annual engagement letter shall become part of this Contract, each time one is executed in accordance with Article VI and that this Contract and the annual engagement letter for the respective fiscal year shall govern the agreement between the parties for the fiscal year noted in the annual engagement letter. Any conflict between specific provisions of this Contract and similar provisions of the engagement letter, this Contract will prevail as indicated in subsection 6.3.

III. SCOPE OF SERVICES

CONTRACTOR, in accordance with each annual engagement letter, shall provide the following services:

COST ALLOCATION PLANS AND INDIRECT COST RATES

- 3.1 **CONTRACTOR** shall provide all services and perform all acts necessary to complete all of the Tasks and Sub-Tasks set forth in Attachment I to this Contract, which is incorporated herein by reference and made a part hereof for all purposes. The Tasks and Sub-Tasks to be performed and completed by **CONTRACTOR** under this Contract are set forth in more detail in Attachment II to this Contract, which is incorporated herein by reference and made a part hereof for all purposes. In the event of conflict between any provision in Attachment I and any provision in Attachment II, the provision in Attachment I shall control. In the event of conflict between any provision in this Contract and any provision in Attachment I or Attachment II, the provision in this Contract shall control.
- 3.2 **CONTRACTOR** shall discharge its duties under this Contract as a prudent expert solely in the interests of the **CITY** with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Contract and in a manner that avoids conflicts of interest and self-dealing.
- 3.3 **CONTRACTOR** shall at all times be sufficiently staffed with personnel qualified to render all of its services specified in this Contract.
- 3.4 **CONTRACTOR** shall conduct the examination with minimal disruption and interference with **CITY'S** normal day-to-day operations.
- 3.5 **CITY** shall have the right to terminate this Contract, in accordance with Article X. Termination, in whole or in part, should **CONTRACTOR'S** work not be in accordance with the Statement of Work.

IV. TERM AND COMMENCEMENT OF WORK

- 4.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the commencement of work through completion of the Plans for the fiscal years ending September 30, 2014, 2015, and 2016. In addition, **CITY** shall have the option to renew and extend the Contract for two (2) one (1) year terms, with Finance Director approval for each renewal and extension, for fiscal years 2017 and 2018. Continuation of this Contract beyond the first year, and each and every year thereafter, is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.
- 4.2 In the event **CITY** requests **CONTRACTOR** to provide services for **Task 8** set out in Article III, Attachment I, the commencement and termination dates shall be established in the written request from the Director of Finance or his designee and

as agreed to by the **CONTRACTOR**. The terms and conditions of this Contract shall continue to apply to the provision of such services as mutually agreed to by both parties until the completion of such services to the satisfaction of the Director of Finance or his designee.

V. CONTRACT PRICING AND BILLING

- 5.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the consulting services provided for in Article III for fiscal years 2014, 2015 and 2016 shall not exceed the amount indicated below. If this Contract is renewed and extended for fiscal years 2017 and 2018, the total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the consulting services provided for in Article III for those fiscal years shall not exceed the amounts indicated below.

| Fiscal Year | Service Fee |
|-----------------------|--------------------|
| 2014 | \$38,900 |
| 2015 | \$38,900 |
| 2016 | \$39,700 |
| 2017 | \$40,500 |
| 2018 | \$41,500 |
| Total Contract | \$199,500 |

- 5.2 **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.
- 5.3 The payment schedule in each Fiscal Year for services rendered shall be as follows:

Progressive payments shall be based on achieving the following project milestones.

- 10% of the fee due upon project initiation (presentation of the data collection correspondence by the **CONTRACTOR** to the Director, or the designee)
- 30% of the fee (plus expenses) due following initial data collection interviews with City staff.
- 40% of the fee (plus expenses) due upon submission of draft cost allocation plan to the **CITY**.

- 20% of the fee (plus expenses) due upon submission of the final cost allocation plan to the CITY.

Payments are due within 30 days after receipt of an invoice by the CITY.

- 5.4 All progress billings for the fees established herein will be rendered by the **CONTRACTOR** to the **CITY** in a detailed breakdown of services provided by **CONTRACTOR** to include at a minimum the information presented in the following format:

| Expense Type | Hours | Amount |
|------------------------|--------------|---------------|
| Labor | (# Hours) | \$ |
| Expenses | | \$ |
| Total Costs Due | | \$ |

- 5.5 The total of all payments for services associated with **Task 8** as described in Article III, Attachment I, shall not exceed \$12,000.

VI. INCORPORATION BY REFERENCE

- 6.1 The annual engagement letter for fiscal year 2014, executed by **CONTRACTOR**, attached hereto as Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.
- 6.2 The parties hereto acknowledge and agree that prior to the commencement of the fiscal years 2015 and 2016, (and, if applicable through renewal and extension of this Contract, fiscal years 2017 and 2018) consulting services, herein required, **CITY** and **CONTRACTOR** will execute a new annual engagement letter for each upcoming fiscal year. That annual engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously incorporated annual engagement letter for consulting services.
- 6.3 In the event of a conflict or inconsistency between the specific terms of this Contract and the similar provisions of any of the annual engagement letters ultimately incorporated herein as Exhibit A, the terms of this Contract shall govern and prevail.

VII. OWNERSHIP OF DOCUMENTS; INTELLECTUAL PROPERTY

- 7.1 In no event shall the Work Product be considered "work for hire" as the term is defined in the Uniform Commercial Code.
- 7.2 Notwithstanding anything contained to the contrary in this Contract or in any Statement of Work or other attachment hereto, any and all intellectual property or

other proprietary data owned by **CONTRACTOR** prior to the effective date of this Contract or developed by **CONTRACTOR** outside of the scope of this Contract but not as a Deliverable or part of the Work Product (“Consultant Information”) shall remain the exclusive property of **CONTRACTOR** even if such Consultant Information is embedded or otherwise incorporated into the Work Product or used to develop the Work Product. **CITY’S** rights under this Article shall not apply to any Consultant Information or any component thereof regardless of form or media.

- 7.3 Upon payment in full of all applicable fees, **CITY** shall receive and be the exclusive owner of all Deliverables and information, documents, writings, and instruments necessary to operate those Deliverables.

VIII. RECORDS

- 8.1 **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.
- 8.2 **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.
- 8.3 **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.

IX. SBEDA ORDINANCE COMPLIANCE

9.1 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 Contract 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 Contract. Unless defined in a contrary manner herein, terms used in this section of the Contract 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.

9.2 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.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein CITY requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to 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 CITY. The CVR-assigned identifiers are also used by the Goal Setting Committee (GSC) 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.

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, 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.

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 a 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, a 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.

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 **CITY’S** 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 a SBE firm must be direct, independent and by Individuals only. Ownership of a 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 **CITY** 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 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 **CITY**.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in **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 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 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 – CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

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

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by CITY for purposes of providing goods or services for the CITY. For purposes of this Contract, 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 Contract, **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.

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.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by **CONTRACTOR** may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

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 and any contract modification amendments.

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 which states the CONTRACTOR'S commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this Contract, 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 Contract 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 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 Contract is not inclusive of MBEs.

9.3 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 Contract, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Contract, and are considered by the Parties to this Contract 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:

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;
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;

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 Contract;
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.
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.
6. **CONTRACTOR** shall retain all records of its Subcontractor payments for this contract for a minimum of four (4) 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 (4) years or as required by state law following the final determination of litigation, whichever is later.
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.

8. **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.

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.

9.4 SBEDA Program Compliance – Affirmative Procurement Initiatives

The **CITY** has applied the following contract-specific Affirmative Procurement Initiative 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 Contract:

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.

9.5 Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Contract, 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 **CONTRACTOR** retaliate against any person for reporting instances of such discrimination. The **CONTRACTOR** shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the **CITY'S** Relevant Marketplace. The **CONTRACTOR** understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the **CONTRACTOR** from participating in **CITY** contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. **CONTRACTOR'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 Contract. **CONTRACTOR** shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to **CITY** contracts.

9.6 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 (10) 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.

9.7 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 Contract to:

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;
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;
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;
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
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:

1. Suspension of Contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of Contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and

5. Disqualification of **CONTRACTOR** or other business firm from eligibility for providing goods or services to the **CITY** for a period not to exceed two (2) years (upon City Council approval).

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provisions of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following:
 - 10.2.1 Neglect or failure by **CONTRACTOR** to perform or observe any of the terms, conditions, covenants or guarantees of this Contract or of any amendment between **CITY** and **CONTRACTOR**;
 - 10.2.2 Failure by **CONTRACTOR** to comply with Article IX. above and required throughout the entire term of this Contract, and/or to correct any deficiency therein within the time allotted, as specified in a written notice from **CITY** to **CONTRACTOR** SENT PURSUANT TO Section 9.4 above;
 - 10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days written notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
 - 10.2.4 It is possible that because of unexpected circumstances, **CONTRACTOR** may determine that it is unable to form an opinion or complete the engagement. Accordingly, **CONTRACTOR** may decline to express an opinion or issue reports. Further, if in its professional judgment the circumstances necessitate, **CONTRACTOR** may resign from the engagement prior to completion. In the event of such resignation, **CONTRACTOR** shall give **CITY** thirty (30) days prior written notice.
- 10.3 Subsection 10.2.1 notwithstanding, in the event that any such neglect or failure to perform or observe terms, conditions, covenants, or guarantees occurs, **CITY** shall give written notice to **CONTRACTOR** and allow **CONTRACTOR** ten (10) days from the date of such receipt of notice to cure the neglect or failure. If the noted deficiencies are not remedied within the allotted time and to the satisfaction of the **CITY**, the **CITY** may proceed with the termination of this Contract. This Section 10.3 shall not apply to termination of this Contract pursuant to Article IX. Section 9.4 and Article X. Section 10.2.2 of this Contract, or to termination of this Contract

pursuant to Section 10.2.4 above.

10.4 Upon a decision to terminate by CITY and the expiration of any cure period, written notice of such shall be promptly provided to CONTRACTOR specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated.

10.4.1 Upon receipt by either party of a notice to terminate, all finished reports for which payment has been received, prepared by CONTRACTOR under this Contract, shall be provided to the CITY, provided that CONTRACTOR determines in its sole discretion it is able to provide such reports under applicable professional standards.

10.4.2 Within thirty (30) days of the effective date of termination CONTRACTOR shall submit to CITY its claim in detail for any monies owed by CITY for services performed under this Contract, including all work performed by CONTRACTOR required by the provisions of this Contract to the date of notice to terminate and for any necessary and proper work performed in the ensuing thirty (30) day period, to be determined after discussion with CITY, provided however, that such payment shall not exceed the maximum amount set out in subsection 5.1

XI. NOTICE

11.1 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.

| <u>If intended for CITY, to:</u> | <u>If intended for CONTRACTOR, to:</u> |
|---|---|
| City of San Antonio Finance Department Attn: Troy Elliott 111 Soledad 5 th Floor San Antonio, Texas 78205 or P.O. Box 839966 San Antonio, Texas 78283-3966 | MGT OF AMERICA, INC. Attn: Mark Carpenter 4009 Banister Lane, Suite 265 Austin, TX 78704 |

XII. CONFLICT OF INTEREST

- 12.1 **CONTRACTOR** certifies and warrants that neither **CONTRACTOR** nor any of its agents, representatives or employees has paid or offered to pay any bribe, kickback or similar payment or other consideration to be selected for the award of this contract or to influence the selection of its proposal.
- 12.2 **CONTRACTOR** certifies and warrants that after reasonable investigation to the best of its knowledge, no person who will in any way either directly participate in or directly supervise any agent, representative or employee who directly participates in the performance of the obligations hereunder has or will have any conflict of interest, direct or indirect, with **CITY**. For purposes of this subsection, "conflict of interest" shall mean that the entity or person has an interest that is materially and directly adverse to the interest of the **CITY** other than the vendor/customer relationship existing pursuant to this Contract.
- 12.3 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio City Charter and its Ethics Code prohibit a City officer or employee, from having a financial interest in any contract with the **CITY** or any City agency, such as City-owned utilities. A City "employee" is any employee of the **CITY** who is required to file a financial disclosure statement pursuant to Section 1(a) of Part G (Financial Disclosure Report). A City "officer" includes the Mayor or any Council member; a Municipal Court Judge or Magistrate; or a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the **CITY**. 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.

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 **CITY**. **CONTRACTOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contacts Disclosure Statement in compliance with the **CITY'S** Ethics Code.

- 12.4 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR'S** knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations,

it will notify CITY of said submittal, in writing, in accordance with the notice provisions set forth in Article XXIII. Below.

- 12.5 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm, in writing, that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.
- 12.6 **CONTRACTOR** warrants and certifies and this contract is made in reliance thereon that it has tendered to **CITY** an accurate Litigation Disclosure Statement.

XIII. INSURANCE

- 13.1 Prior to the commencement of any work under this Contract, **CONTRACTOR** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "**Preparation of Cost Allocation Plans and Indirect Cost Rates**" 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 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 Contract until such Certificate and endorsements have been received and approved by the City's Finance Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 13.2 **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Contract 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 Contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
- 13.3 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 Contract, and any extension hereof, at **CONTRACTOR'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A-

(VII), in the following types and for an amount not less than the amount listed below:

| <u>TYPE</u> | <u>AMOUNTS</u> |
|--|--|
| 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 \$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 |
| 5. Professional Liability To be maintained and in effect for no less than two years subsequent to the completion of the professional services | \$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. |

13.4 **CONTRACTOR** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **CONTRACTOR** herein, and provide a Certificate of Insurance and endorsement that names **CONTRACTOR** and **CITY** as additional insureds. **CONTRACTOR** shall provide **CITY** with said Certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.5 **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: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 13.6 **CONTRACTOR** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional 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, auto liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**; and
 - 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.
- 13.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **CONTRACTOR** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **CONTRACTOR'S** performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- 13.8 In addition to any other remedies the **CITY** may have upon **CONTRACTOR'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **CONTRACTOR** to stop work hereunder, and/or withhold any payment(s) which become due to **CONTRACTOR** hereunder until **CONTRACTOR** demonstrates compliance with the requirements hereof.

- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which **CONTRACTOR** may be held responsible for payments of damages to persons or property resulting from **CONTRACTOR'S** or its subcontractors' performance of the work covered under this Contract.
- 13.10 It is agreed that **CONTRACTOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- 13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 13.12 **CONTRACTOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNIFICATION AND RELATED PROVISIONS

- 14.1 **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 **CONSULTANT'S** activities under this Contract, including any acts or omissions of **CONSULTANT**, any agent, officer, director, representative, employee, consultant or subcontractor of **CONSULTANT**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 14.2 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any

other person or entity. **CONSULTANT** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT'S** activities under this Contract and shall see to the investigation and defense of such claim or demand at **CONSULTANT'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONSULTANT** of any of its obligations under this paragraph.

- 14.3 **CONSULTANT** shall retain defense counsel within seven (7) business days of **CITY'S** written notice that **CITY** is invoking its right to indemnification under this Contract. Failure of the **CITY** to provide a written rejection of **CONSULTANT'S** counsel, including reasonable cause, within (3) days of receipt of **CONSULTANT'S** notice shall constitute acceptance of **CONSULTANT'S** counsel. If **CONSULTANT** fails to retain Counsel within such time period, **CITY** shall have the right to retain defense counsel on its own behalf, and **CONSULTANT** shall be liable for all costs incurred by **CITY**. **CITY** shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 14.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of **CONSULTANT**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for **CONSULTANT** or any subcontractor under worker's compensation or other employee benefit acts.

ARTICLE XV. REPRESENTATIONS AND WARRANTIES OF PARTIES

- 15.1 **CONTRACTOR** shall provide guidance to **CITY** in determining the data required to provide its services under this Contract. To the best of **CITY'S** knowledge, **CITY** guarantees the accuracy and completeness of the data provided by **CITY** to prepare the *Cost Allocation Plans and Indirect Cost Rate Proposal*. **CITY** acknowledges and agrees that **CONTRACTOR** shall be entitled to rely upon the accuracy and completeness of the data provided by **CITY** to perform the work under this Contract and **CONTRACTOR** shall not be liable for any missed or lost revenue associated with, or related to, the services provided pursuant to this Contract that result from **CONTRACTOR'S** reliance upon the data provided by **CITY**.
- 15.2 **CONTRACTOR** represents and warrants to **CITY** that the Cost Allocation Plans and the Indirect Cost Proposal developed by **CONTRACTOR** and delivered to **CITY** in accordance with the terms and conditions of this Contract will be in full compliance with the then-current version of (a) all applicable Generally Accepted Accounting Principles (GAAP); (b) all applicable Federal and State statutes,

rules, regulations, and circulars, including but not limited to (i) OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments; (ii) OMB Circular A-102 Common Rule for State, Local, and Indian Tribal Governments; (iii) OMB Circular A-133 for federal funding and the OMB Circular A-133 Compliance Supplement; and (iv) State of Texas Single Audit Circular for state funding.

- 15.3 **CITY** shall notify **CONTRACTOR** in writing in the manner specified in Article XI Notice in the event of a challenge by any Federal or State Agency, Commission, Department, or Office to any portion(s) of the Cost Allocation Plans and/or the Indirect Cost Proposal prepared by **CONTRACTOR** and delivered to **CITY** in accordance with the terms and conditions of this Contract. **CONTRACTOR** shall, at no additional compensation to **CONTRACTOR** or expense of any nature or type whatsoever to **CITY**, timely provide to **CITY** and/or such Federal or State Agency, Commission, Department, or Office all services, personnel, records, work papers, and other materials or information that are necessary to support and justify the challenged portion(s) of such Cost Allocation Plans and/or the Indirect Cost Proposal.
- 15.4 **CONTRACTOR** shall not be liable for audit disallowances except those due to **CONTRACTOR'S** willful misconduct or gross negligence.
- 15.5 The provisions of this Article XV shall survive the completion or earlier termination of this Contract.

XVI. ASSIGNMENT AND SUBCONTRACTING

- 16.1 **CONTRACTOR** shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of **CONTRACTOR**. **CONTRACTOR**, its employees or its subcontractors shall perform all necessary work.
- 16.2 It is **CITY'S** understanding and this Contract is made in reliance thereon, that **CONTRACTOR** intends to use the following subcontractors in the performance of this Contract: NONE Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, or designee prior to the provision of any services by said subcontractor.
- 16.3 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 Contract. Compliance by subcontractors with this Contract 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 Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director, or designee.

- 16.4 Except as otherwise stated herein, **CONTRACTOR** may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director, as evidenced in writing. As a condition of such consent, if such consent is granted, **CONTRACTOR** shall remain liable for completion of the services outlined in this Contract in the event of default by the successor **CONTRACTOR**, assignee, transferee or subcontractor.
- 16.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONTRACTOR** assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, **CITY** may, at its option, cancel this Contract and all rights, titles and interest of **CONTRACTOR** shall thereupon cease and terminate, in accordance with Article X. Termination, notwithstanding any other remedy available to **CITY** under this Contract. The violation of this provision by **CONTRACTOR** shall in no event release **CONTRACTOR** from any obligation under the terms of this Contract, nor shall it relieve or release **CONTRACTOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

XVII. INDEPENDENT CONTRACTOR

- 17.1 **CONTRACTOR** covenants and agrees that he or she or it is an independent contractor and not an officer, agent, servant or employee of **CITY**. **CONTRACTOR'S** staff accountant(s) provided hereunder will remain the employees of **CONTRACTOR**, performing their work independently, but as assigned by Director or designee. The doctrine of respondent 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 ventures between **CITY** and **CONTRACTOR**. The parties hereto understand and agree that **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 **CONTRACTOR** under this Contract and that **CONTRACTOR** have no authority to bind **CITY**.
- 17.2 Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by **CITY**, what instruction or direction is provided by **CITY**, **CONTRACTOR**, and those persons designated by it to provide services shall not be deemed employees of **CITY**, and shall not be entitled to wages or

benefits from **CITY**, other than the compensation provided herein.

XVIII. AMENDMENTS

- 18.1 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**, and subject to approval by the City of San Antonio City Council, evidenced by passage of an ordinance.
- 18.2 The parties hereto understand and agree that any request(s) by the **CITY** to provide services for **Task 8** pursuant to Article III, Attachment I shall not constitute an amendment to the provisions of this Contract.
- 18.3 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **CONTRACTOR** warrants and confirms that **CONTRACTOR** and any other person designated to provide services hereunder has and shall maintain the requisite training, license and/or certification to provide said services, and meets and shall continue to meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XX. COMPLIANCE

- 20.1 **CONTRACTOR** shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XXI. OTHER AGREEMENTS

- 21.1 It is acknowledged and understood by the parties hereto that this Contract, including the respective Annual Engagement Letter for each fiscal year executed pursuant to it, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. It is also acknowledged and understood by the parties hereto that with

the execution of this Contract, the authorizing ordinance, the Annual Engagement Letters and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CONTRACTOR** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each year's Plans review, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR** and that engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for consulting services. In the event of a conflict or inconsistency between specific terms of this Contract and the similar provisions of any of the engagement letters, ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

XXII. SEVERABILITY

- 22.1 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 possible which is legal, valid and enforceable.

XXIII. LAW APPLICABLE

- 23.1 **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.**
- 23.2 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.

XXIV. LEGAL AUTHORITY

- 24.1 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.

XXV. PARTIES BOUND

25.1 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.

XXVI. CAPTIONS

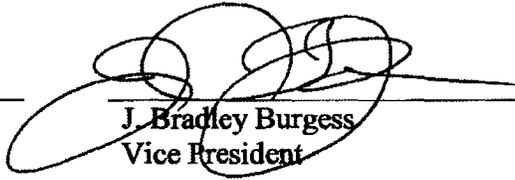
26.1 The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

EXECUTED and **AGREED** to this the _____ day of _____, 2014.

CITY:
CITY OF SAN ANTONIO

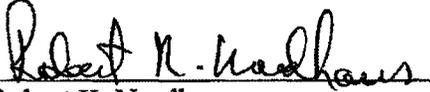
CONSULTANT:
MGT OF AMERICA, INC.

Troy Elliott
Finance Director



J. Bradley Burgess
Vice President

Approved as to Form:



Robert K. Nordhaus
Assistant City Attorney

A T T A C H M E N T I

Tasks From RFP

To develop the Full-Cost Central Services Cost Allocation Plan, OMB A-87 Central Services Cost Allocation Plan, and Indirect Cost Rate Proposals.

Task 1 – Provide a detailed document outlining the proposed methodologies to be used to prepare the Cost Allocation Plans and Indirect Cost Rate Proposal and brief City staff on such methodologies (must be completed within one (1) week from the date of contract execution).

Task 2 – Research and gather materials necessary to develop the cost allocation plans and indirect cost rate proposals (must be completed no later than two (2) weeks from completion of Task 1).

Coordinate development of plan, including information required and methodology, with appropriate Budget, Finance and other City staff;

Identify City's available financial and organizational information sources, including annual reports and organizational charts for the various City departments;

Update City's organizational charts and classify all City functions into one of the three categories: executive, legislative, or judicial;

Inventory all Federal, State and enterprise funds to identify areas and projects with the greatest potential for recovery of administrative costs;

Identify City Departments that provide administrative services to other departments such as data processing, purchasing, accounting, and personnel;

Develop the allocation bases for administrative costs to City departments in compliance with OMB Circular A-87;

Develop measurable units of service for user City departments in order to measure the units of service used;

Prepare cost allocation worksheets for each City department calculating expenses in the immediately preceding fiscal year that are allowed under OMB Circular A-87;

Prepare worksheets for each user department showing services provided to such department in measurable units of service.

Task 3 – Utilize costs identified in Task 1 to develop, submit and recover costs that are recoverable under various Federal grant programs, to include Internal Service Fund allocations; (must be completed no later than three (3) weeks from completion of Task 2).

Determine the cost of operating each program inventoried in Tasks 1 and 2;

Identify indirect costs associated with the operation of each program and provide the City with a spreadsheet that identifies such costs;

Present final cost allocation plan to the City staff showing indirect costs recoverable from Federal and State agencies;

Help negotiate City's recoverable costs pursuant to OMB Circular A-87 with Federal and State officials to include coordination with the City's federal cognizant and state coordinating agencies to acquire their written approval of the Indirect Cost Rate Proposal, if necessary.

Task 4 – Develop a Full Cost Central Services Allocation Plan to allow the City to account for all other central services costs from non-general fund sources other than grant funded programs (must be completed no later than one (1) week from completion of Task 2).

Task 5 – Develop an Indirect Cost Rate Proposal for the following City departments (must be completed no later than two (2) weeks from completion of Task 2).

Animal Care Services
Aviation
Building and Equipment Services
Capital Improvement Management Services
Center City Development
Cultural & Creative Development
Development Services
Economic Development
Office of Sustainability
Fire
Grants Monitoring & Administration
Human Services
Information Technology Services
Library
Health
Military Affairs
Parks & Recreation
Planning & Community Development
Police
Public Works
Solid Waste

Task 6 – Provide final and supporting documentation (must be completed no later than three (3) week from completion of Tasks 2).

Respondent will print four (4) copies each of the final Cost Allocation Plans and the Indirect Cost Rate Proposal to be bound with covers imprinted with the company logo;

Respondent will provide electronic versions of the final Cost Allocation Plans and the Indirect Cost Rate Proposal;

Respondent will provide all electronic worksheets, templates and supporting documentation used to develop the plans.

Task 7 – Provide on-site training to City staff (must be completed no later than one (1) week from completion of Task 6).

Train appropriate City staff that either administer projects or are associated with budgeting functions to develop cost allocation plans to recover costs for their departments;

Train appropriate City staff to develop similar plans for the City in the future.

Task 8 – Assist City staff with the development/ best practice of modules for preparation of future cost allocation plans and indirect cost rates for Workers' Compensation, Liability, Purchasing & General Services, and Information Technology Services.

These charges will be added to the OMB A-87 indirect costs, in order for the City to properly recover dollars expended for grant personnel. The qualified Respondent will further provide best practices obtained from other cities relating to indirect cost charges allocated to grants.

A T T A C H M E N T I I

**Tasks From MGT Proposal
Pages 49-59**