

AN ORDINANCE 2010-04-08-0309

**AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT FOR FEDERAL REPRESENTATION SERVICES WITH PATTON BOGGS, LLP IN AN AMOUNT UP TO \$16,666.00 PER MONTH, BEGINNING MAY 1, 2010 AND ENDING SEPTEMBER 30, 2011.**

\* \* \* \* \*

**WHEREAS**, since 1994, the City of San Antonio has retained consultants to represent its federal interests in Washington, D.C. and increasingly challenging budget constraints make it imperative for local communities to have a strong advocate at the federal level; and

**WHEREAS**, because the City's current federal representation contract expires on April 30, 2010, staff from the Intergovernmental Relations Department, Purchasing and General Services Department, and the City Attorney's Office developed a Request for Proposals (RFP) for federal representation services, which was issued on October 7, 2009; and

**WHEREAS**, a total of ten proposals were received in response to the RFP and one firm withdrew from consideration; and

**WHEREAS**, on November 20, 2009, and on December 1, 2009, the Review Panel met to review and evaluate proposals and the top five respondents were selected for interviews; and

**WHEREAS**, on January 7, 2010, the Review Panel interviewed the five respondents in person and the City Manager conducted a telephonic interview of the top two respondents on February 12, 2010; and

**WHEREAS**, Patton Boggs LLP, received the highest score of all respondents throughout the process and staff recommends entering a Professional Services Agreement for Federal Legislative Services with the firm; and

**WHEREAS**, staff presented its recommendation to the City Council Intergovernmental Relations Committee on March 10, 2010 and the Committee voted to forward staff's recommendation to the full City Council for consideration; **NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of the Professional Services Agreement for Federal Representation Services with Patton Boggs, LLP, in an amount of up to \$16,666.00 per month, beginning on May 1, 2010 and terminating on September 30, 2011, with two one-year renewal options, are authorized and approved.

**SECTION 2.** The City Manager, or her designee, is authorized to execute the Professional Services Agreement for Federal Representation Services with Patton Boggs, LLP. A copy of the Agreement, in substantially final form, is attached to this Ordinance as Exhibit I.

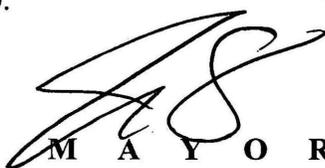
**SECTION 3.** Funding in the amount of \$83,330.00 for this Ordinance is available in Fund 11001000, Cost Center 0801010001, General Ledger 5201040, as part of the Fiscal Year 2010 Budget. Funding for future fiscal years will be contingent upon City Council approval.

**SECTION 4.** Payment not to exceed the budgeted amount is authorized to Patton Boggs, LLP and shall be encumbered with a purchase order.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** This Ordinance shall be effective on and after the tenth day after passage.

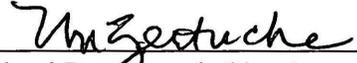
**PASSED AND APPROVED** this 8<sup>th</sup> day of April, 2010.

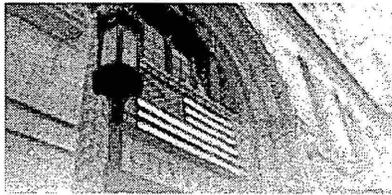
  
M A Y O R  
Julián Castro

**ATTEST:**

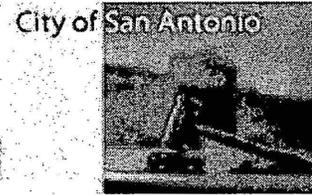
  
for Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
for Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



**Agenda Voting Results - 28**

<b>Name:</b>	5, 6A, 7, 10, 11, 12, 13A, 13C, 13D, 13E, 14, 16, 20A, 20B, 20D, 22, 23, 24, 25, 28, 29						
<b>Date:</b>	04/08/2010						
<b>Time:</b>	10:23:20 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a federal representation services agreement with Patton Boggs, LLP in an amount up to \$16,666.00 per month for one year beginning May 1, 2010. [A.J. Rodriguez, Deputy City Manager; Carlos Contreras, Director, Intergovernmental Relations]						
<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				x	
Leticia Cantu	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				

Exhibit  
I

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
FEDERAL REPRESENTATION SERVICES**

STATE OF TEXAS           §  
                                      §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the 8<sup>th</sup> day of April, 2010 and Patton Boggs L.L.P. (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

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

**I. DEFINITIONS**

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

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

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

"Director" shall mean the acting director of City's Intergovernmental Relations Department.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on May 1, 2010 and terminate on September 30, 2011.

2.2 City shall have the right, in its sole discretion, to exercise two one-year renewal options, subject to the approval of the City Council of the City of San Antonio (hereinafter referred to as "City Council"). The First such renewal option, if exercised shall begin October 1, 2011 and expire September 30, 2012.

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

### III. SCOPE OF SERVICES

3.1 The firm of Patton Boggs L.L.P. shall be responsible for the services and tasks set forth in this Agreement. The City reserves the right to engage additional consultants to provide federal legislative services during the terms of this Agreement should the need arise. The following members of the firm will be responsible for the delivery of services through this Agreement: Marek Gootman and Tom Downs will serve as co-leaders. Rodney Slater and Sarah Vilms will also provide services on the Agreement and Baltazar "Walter" Serna will be the local representative. Marek Gootman will be the primary lead on the development of strategic plans for the City's Priority Initiatives, such as high capacity transportation, education, green jobs creation and sustainable communities. Tom Downs, with assistance from Sarah Vilms, will be the lead on Appropriation requests, policy initiatives and implementation of the strategic plans. Rodney Slater will provide strategic analysis and planning on high capacity transportation and sustainability issues and will provide assistance with high level Agency, legislative and/or administration meetings on transportation issues, as requested.

The Consultant shall also:

3.1.1 Assist in the formulation, adoption by City Council, and implementation of the City's Federal Legislative Program for 2<sup>nd</sup> Session of the 111<sup>th</sup> Congress and the 1<sup>st</sup> Session of the 112<sup>th</sup> Congress;

3.1.2 Develop and implement strategic plans for 2<sup>nd</sup> Session of the 111<sup>th</sup> Congress and the 1<sup>st</sup> Session of the 112<sup>th</sup> Congress. The Strategic Plans shall include: timelines/calendars, goals, objectives and expected outcomes for the advancement of the applicable City's Federal Legislative Program and shall be continuously monitored and updated to maximize the opportunities for success. Consultant will present such strategic plans to the City Manager, or her designee, and Director for approval.

3.1.3 Identify three opportunities for congressional input for each initiative in the City's Federal Legislative Program and identify at least three community supporters for each/such initiatives. Identify committees of jurisdiction responsible for identified Federal Legislative Priorities. Develop strategy and execute tactics in leveraging key relationships with decision makers and appropriators of relevant committees. This will include providing written comments on executive branch regulatory proceedings. Consultant will be responsible for the development of all testimony and written communications with the federal government. Consultant shall also prepare memoranda and letters of support, as requested by City;

3.1.4 Identify at least two funding sources for each federal appropriations request in the City's Federal Legislative Program.

3.1.5 Plan and arrange at least two City Council Intergovernmental Relations Committee visits to Washington D.C. per calendar year, including high level meetings in Washington D.C. with key members of the Administration, Congress and/or the Agency heads in the Executive branch for the Mayor, Manager and/or

the Chair of the Intergovernmental Relations Council Committee for the purpose of advancing the City's Federal Legislative Program and Strategic Plan. In addition, Consultant shall prepare for City review a briefing book in connection to arranged Washington D.C. meetings and visits;

3.1.6 Produce, submit for City review, and distribute to the Texas Congressional Delegation a quarterly written update on the City's entire Federal Legislative Program;

3.1.7 Provide monthly written reports on the City's entire Federal Legislative Program and the corresponding strategic plan to the City Manager or her designee and to Director. The reports will cover activities undertaken during the prior month to include all official contacts with Members of Congress, their staffs, members of the Executive Branch, their staff and any other relevant contacts with any other federal Agencies, Boards and Commissions, and the National League of Cities, and U.S. Conference of Mayors;

3.1.8 Attend monthly meetings with the City Council Intergovernmental Relations Committee, as requested by the City Manager or her designee and/or Director. At these monthly meetings, Consultant will provide a comprehensive oral report of the Federal Legislative Program and the corresponding strategic plan and their legislative/regulatory status. Consultant will be available, during monthly visits to San Antonio, to meet with City staff for site visits and project inspections;

3.1.9 Host at least two gatherings of City Council members and City staff with key members of Congress, including Bexar County and Texas Delegation members to advance the City's Federal Legislative Program. At least one meeting will be held in Washington, D.C. and one in San Antonio. Consultant will be required to submit the invitation list for each gathering to the City Manager, or his/her designee, for approval;

3.1.10 Develop a comprehensive itinerary for Mayor, City Council and City Manager trips to Washington, D.C., including: i) a recommended agenda for the trip, ii) the necessary background information (e.g., CRS reports, CQ and/or National Journal articles, newspaper articles or other background reports) for each subject in the briefing book, and iii) arrangements for all scheduling, transportation, meeting facilities and meals for trip participants;

3.1.11 Provide timely information and guidance on federal funding, identify grant opportunities to support City programs and services and support federal consideration of City applications;

3.1.12 Maintain regular contact with the National League of Cities and U.S. Conference of Mayors; and

3.1.13 Semi-annually, Director will conduct a confidential survey of Congressional offices to obtain feedback and gauge effectiveness of the

Consultant performance. Survey results will be presented to the IGR Council Committee.

3.1.14 Consultant shall be evaluated by Director semi-annually to ensure compliance with Scope of Services and Performance Measures. Consultant will have the opportunity to review and comment on each evaluation. After review and comment by Consultant, evaluation results will be presented to the Intergovernmental Relations Council Committee.

3.1.15 Perform such other services as directed by Director and City Manager, or her designee, and when requested, provide information to City Council, in a timely manner, so as to allow City Council to make informed decisions relative to legislative and regulatory matters that may arise and may not be included in the Federal Legislative Program.

3.2 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.3 City may, at any time and in its sole discretion, assign additional legislative and regulatory matters to Consultant that are not part of the City's Federal Legislative Program.

3.4 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.5 Performance measures. A matrix indicating performance measures which will be utilized in evaluating the performance of Consultant is attached hereto and incorporated herein as Exhibit I. Some measures require the mutual agreement by Consultant and City during the term of this Agreement or a subsequent renewal option, if applicable. Such measures, once agreed to by the Parties, will be incorporated into this Agreement as an addendum without the necessity of any further action.

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant a monthly amount not to exceed sixteen thousand, six hundred and sixty-six dollars (\$16,666.00) as total compensation, to be paid to Consultant as follows:

4.1.1 Consultant shall invoice City monthly for the fee identified in Section 4.1. Said invoice shall include a statement of all work performed under this Agreement during the period covered by the invoice.

4.1.2 City shall pay Consultant within fifteen (15) days of the receipt of an invoice under Subsection 4.1.1, subject to the provisions of Section 3.4.

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

4.3 City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records

referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by either Party upon 10 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this Section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets.

7.4.3 Failing to perform or failing to comply with any covenant herein required.

7.4.4 Performing unsatisfactorily.

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

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7/9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

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

If intended for City, to:

City of San Antonio  
Attn: Carlos Contreras  
Intergovernmental Relations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If intended for Consultant, to:

Patton Boggs L.L.P.  
Attn: Thomas Downs  
2550 M Street, NW  
Washington, D.C. 20037

## IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Intergovernmental Relations Department, which shall be clearly labeled "Federal Representation Services" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Intergovernmental Relations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

9.3 A consultant's financial integrity is of interest to City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant'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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
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	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

e. Contractual Liability	
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

9.4 Consultant 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 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 City where City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

9.8 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by City for liability arising

out of operations under this Agreement.

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

9.10 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

## **X. INDEMNIFICATION**

**10.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this AGREEMENT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole 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.**

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Consultant's cost. 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 Article.

10.2 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant

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

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

## **XI. COPYRIGHT USAGE**

11.1 Consultant shall pay all royalties and licensing fees necessary for the utilization of copyrighted materials in the provision of under this Agreement. Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. Consultant shall defend all suits for infringement of any Intellectual Property rights.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

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

12.2 Any subcontracting of the services to be provided under this Agreement shall be approved by the 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 Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

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

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of Consultant superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

### **XIV. SBEDA**

14.1 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:

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.

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.

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.

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 Consultant’s bid for this project Agreement, attached hereto and incorporated herein as “Exhibit II”.

**14.2 For this Agreement, the Parties agree that:**

- (a) 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
- (b) The failure of Consultant 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.
- (c) Failure of Consultant or any applicable SE to provide any documentation or written submissions required by City’s Intergovernmental Relations 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.
- (d) 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 Consultant’s SBEDA Plan (“Exhibit II”) shall constitute a material breach of the SBEDA Program and this Agreement.
- (e) Consultant shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Exhibit II”) 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 Consultant to City’s Intergovernmental Relations 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.

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

- (a) Failure of Consultant 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
- (b) Modification or elimination by Consultant of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- (c) Termination by Consultant 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
- (d) Participation by Consultant in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

14.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies 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, City shall be entitled, at its election, to exercise any one or more of the following remedies if the Consultant materially breaches the requirements of the SBEDA Program:

- (a) Terminate this Agreement for default;
- (b) Suspend this Agreement for default;
- (c) Withhold all payments due to the Consultant under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- (d) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by City pursuant to the Agreement, or from any other amounts due to the Consultant under the Agreement.
- (e) 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.

14.5 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.

**14.6 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.**

14.7 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 City to exercise in the event a consultant violates the SBEDA Program. 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 Director or the City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

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

- (a) a SBEDA Utilization Goal for the extended period; and
- (b) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and
- (c) the required minimum Good Faith Efforts outreach attempts that Consultant 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 Consultant 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 Consultant to any of the remedies listed above; and/or

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

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

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the Section 15.1, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XVI. AMENDMENTS**

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

#### **XVII. SEVERABILITY**

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

#### **XVIII. LICENSES/CERTIFICATIONS**

18.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said

services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

#### **XIX. COMPLIANCE**

19.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

#### **XX. NONWAIVER OF PERFORMANCE**

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

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

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

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

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

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

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

23.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

**XXIV. CAPTIONS**

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

**XV. INCORPORATION OF EXHIBITS**

25.1 The exhibits listed below are an essential part of the Agreement, which governs the rights and duties of the Parties, and are incorporated herein for all purposes.

**XXVI. ENTIRE AGREEMENT**

26.1 This Agreement, together with its authorizing ordinance and its exhibits, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XVI. Amendments or as otherwise provided for under this Agreement.

**EXECUTED** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY:**  
**CITY OF SAN ANTONIO**

**CONSULTANT:**  
**PATTON BOGGS L.L.P.**

\_\_\_\_\_  
Sheryl Sculley  
City Manager

\_\_\_\_\_  
Thomas Downs  
Partner

Approved as to Form:

\_\_\_\_\_  
Michael Bernard  
City Attorney

Exhibit I: Performance Measures  
Exhibit II: Consultant's SBEDA Plan

Exhibit  
I

<b>FY 2010 PATTON BOGGS FEDERAL CONTRACT-PERFORMANCE MEASURES</b>				
<b>Contract Element</b>	<b>Reviewer</b>	<b>Frequency/ Timing</b>	<b>Acceptance</b>	<b>Measure</b>
<b>Activities</b>				
Help Create the COSA Federal Legislative Program for 2nd Session of 111th Congress and 2nd Session of the 112th Congress	IGR	One-time	Council	Passage by Council
Identify and Arrange Congressional Input Opportunities	IGR	On-going	Affected Party	COSA is informed about the input opportunity in timely manner and if availed, input is given by any deadline
Schedule Appointments and Plan Meetings	IGR	On-going	Affected Party	Mayor, City Manager and IGR
Provide Grant Opportunity Info and Guidance	IGR	On-going	IGR & City Departments	Identify at least (5) applicable grant opportunities annually
Attend Monthly Meetings	IGR	Monthly	IGR	Attendance and participation of Local Consultant
Other Services	IGR	On-going	IGR	Goal is attained
<b>Deliverables</b>				
Strategic Plan & Timeline	IGR	One per issue	IGR	Goal attained
Implementation Plan	IGR	On-going	IGR	Goal attained
Monthly Reports	IGR	Monthly	IGR	(1)Plan execution/status updates
				(2)Recommend Plan modifications
				(3)Provide timely "hot issue" updates

Outcomes	Reviewer	Freq./Timing	Acceptance	Measure
Achieve a 80% effectiveness rating by Federal legislative and administrative branch contacts	IGR	Annual	IGR	Positive feedback received
Achieve a 75% success rate at getting identified priority meetings	IGR	Annual	Mayor, IGR Council, CM & IGR	IGR & Patton Boggs agree on priority meetings. Patton Boggs coordinates meetings.
Ensure 100% of the elements of the COSA Federal program are submitted for consideration by the appropriate federal entities	IGR	Per Session	IGR	(1)All federal appropriation requests submitted for funding consideration. (2)All Policy Initiatives are presented for hearings to increase possibility of passage
Achieve the Agreed Upon Success Rate & funding levels associated therewith for COSA Federal Legislative Program	IGR	Annual	IGR and Patton Boggs	Evaluation of agreed upon success rate
Secure inclusion of major funding initiatives in President's budget	IGR	Per Plan	IGR and Patton Boggs	Evaluate inclusion of major agreed upon funding initiatives in President's budget

Exhibit  
II

SMALL BUSINESS PROGRAM  
*For Use with Contracts Over \$200,000*

1. **Small Business Participation**

It is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the Small Business policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

2. **DEFINITIONS** related to the Small Business Program Provisions:

- a. **Small Business Program**: the Small Business Economic Development Advocacy ("SBEDA") Program governed by this ordinance and managed by the SMALL BUSINESS Program Office.
- b. **Small Business Enterprises (SBE)**: a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for a small business. All firms meeting these thresholds will be considered an SBE.
- c. **Local Business Enterprise (LBE)**: a corporation, partnership, sole proprietorship, or other legal entity which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County for use at the local branch office.
- d. **Minority Business Enterprise (MBE)**: a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County or the San Antonio Metropolitan Statistical Area (the SAMSA) for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBE's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE's category of contracting for at least one year.

- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE's category of contracting for at least on year.

**3. Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

<b>MBE</b>	<b>31%</b>
<b>WBE</b>	<b>10%</b>
<b>AABE</b>	<b>2.2%</b>
<b>SBE</b>	<b>50%</b>

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE, MBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as a AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X's** compliance with the Small Business goals under this scenario would be as follows:

	City's Small Business Goals	Prime Contractor X's Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with **Company D**. **Company D** is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, **Company D** will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE.

**Prime Contractor Y** compliance with the Small Business goals would be as follows:

	City's Small Business Goals	Prime Contractor Y's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

**4. Good Faith Effort Required**

Proposals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which equals or exceeds the above goals. **Any proposal that does not include the GFEP and does not receive approval of the GFEP by the Economic Development Department shall be declared non-responsive, and excluded from consideration.**

**5. SBE-MBE-WBE-AABE Certification Required**

Only companies certified as SBE-MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

**6. Small Business Program Information**

Interested contractors/proposers are encouraged to contact the Small Business Outreach Office for information regarding the City's Small Business Program Policy. Please call (210) 207-3900 or FAX: (210) 207-3909.

**GOOD FAITH EFFORT PLAN**  
**(PAGE 1 OF 4)**

**NAME OF PROJECT:** Federal Representation Services for San Antonio

**BIDDER/PROPOSER INFORMATION:**

Name of Bidder/Proposer: Patton Boggs LLP

Address: 2550 M St., NW

City: Washington State: DC Zip Code: 20037

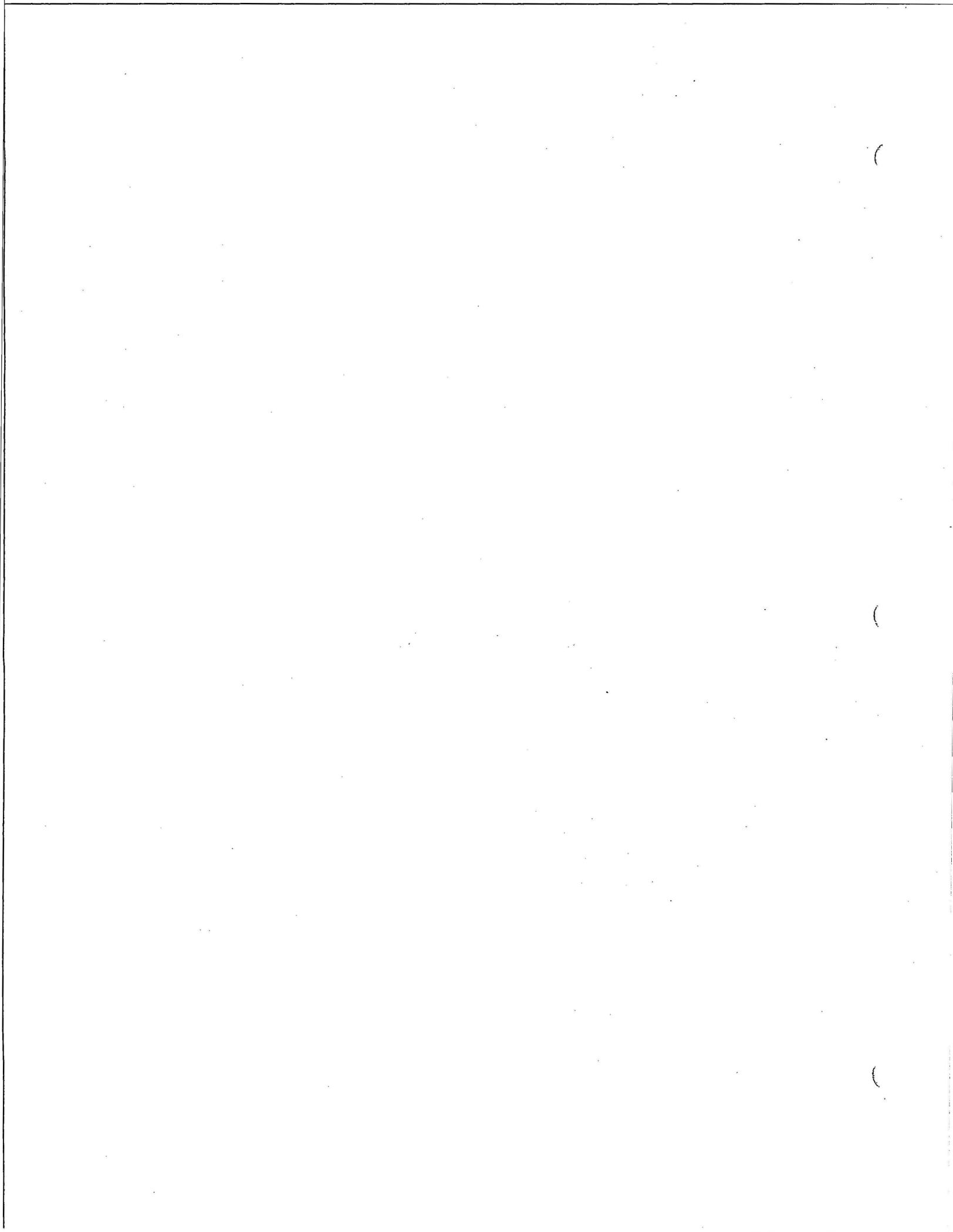
Telephone: (202) 457-6000 E-mail Address: tdowns@pattonboggs.com

Is your firm certified?  Yes  No (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE-SBE CERTIFICATION NUMBER
Serna & Serna, 126 Villita Street, San Antonio, TX 78205	\$4,800/mo.	30%	209059278

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 Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.



**GOOD FAITH EFFORT PLAN**

*(Page 2 of 4)*

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 Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).

**NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.**

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

---

---

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

---

---

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

---

---

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

---

---

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

---

---

---

**GOOD FAITH EFFORT PLAN**

*(Page 3 of 4)*

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

Thomas C. Downs, (202) 457-5634  
\_\_\_\_\_

10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN

(Page 4 of 4)

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN 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.

Thomas C. Downs  
SIGNATURE OF AUTHORIZED OFFICIAL

Partner  
TITLE OF OFFICIAL

Nov. 4, 2009      (202) 457-5634  
DATE                                      PHONE

\*\*\*\*\*

**FOR CITY USE**

Plan Reviewed By: \_\_\_\_\_

Recommendation:              Approval \_\_\_\_\_              Denial \_\_\_\_\_

Action Taken:                      Approved \_\_\_\_\_              Denied \_\_\_\_\_

\_\_\_\_\_  
DIRECTOR OF ECONOMIC DEVELOPMENT



## SCTRCA

Small, Minority, Woman, African-American, Veteran,  
Disabled Individual Business Enterprise  
(S/M/W/AA/V/DIBE) Program

**Law Offices Of Serna & Serna**

has filed the appropriate affidavit with the South Central Texas Regional Certification Agency (SCTRCA) and is hereby certified, in accordance with SCTRCA Policies and Procedures, as a:

**SBE MBE**

This Certification Certificate must be updated by submission of a Compliance Affidavit. You are required to notify the SCTRCA within 30 days of any change in circumstances affecting your ability to meet size, disadvantage status, ownership, or control requirements and any material changes in the information provided in the submission of the business application for certification.

CERTIFICATE EXPIRES: **May 31, 2011**

CERTIFICATE NO. **209059278**

Certified in the following work categories:  
North American Industry Classification System (NAICS) codes(s):

NAICS-541110: OFFICES OF LAWYERS  
NAICS-541199: ALL OTHER LEGAL SERVICES

Blaine R. Mitchell  
Executive Director

**RESPONSE ATTACHMENT E**  
**GOOD FAITH EFFORT PLAN (GFEP)**