TM 01.30.2014
Item # 21

AN ORDINANCE 2014-01-30-0060

AUTHORIZING A CONTRACT WITH GARTNER, INC. TO PROVIDE PROFESSIONAL SERVICES TO ASSIST IN REQUIREMENTS DEFINITION, STRATEGY DEVELOPMENT, RFCSP SOLICITATION AND RFCSP RESPONSE ANALYSIS FOR A COMPREHENSIVE LAND AND BUILDING DEVELOPMENT MANAGEMENT SYSTEM SOFTWARE SOLUTION, ASSIST IN DEVELOPING A STRATEGY, PROVIDE PROJECT PLANNING, PERFORM REQUIREMENTS GATHERING, DEVELOP A REQUEST FOR COMPETITIVE SEALED PROPOSAL (RFCSP), ASSIST WITH THE EVALUATION OF THE PROPOSED SOLUTION(S) AND APPROPRIATING $595,000.00 FROM DEVELOPMENT SERVICES FUNDS'S FUND BALANCE.

* * * * *

WHEREAS, a Request for Proposal (RFP) for "Permit and Inspection Management System Consulting Services" (RFP 6100003120) was issued on July 19, 2013 in order to assist the Development Services Department in developing a replacement strategy for its current permitting, land development, inspection, and code enforcement systems ; and

WHEREAS, six proposals were received and reviewed by an evaluation committee comprised of members from Development Services and the Information Technology Services Department and City procurement policy and procedure assistance from the Finance Department, Purchasing Division; and

WHEREAS, and after initial committee review and discussions, individual technical scores were submitted and based on the results, three firms were shortlisted. Interviews were held on November 4, 2013 and the evaluation committee selected Gartner, Inc. to provide these services based on the City's standard RFP process. The proposals were evaluated based on several weighted factors, to include experience, background, and qualifications, proposed plan and price. Other factors included SBE Prime Contract Program, M/WBE Prime Contract and the Local Preference Program. The Local Preference Program was applied in the evaluation of responses received for this contract; however, the highest ranked firm is not a local business; and

WHEREAS Development Services uses two principal systems to support its business operations: Hansen and ECCO. This initiative will ultimately allow the convergence of all the Development Services Department's core business operations into a "one-address, one-system" solution and will significantly enhance customer service delivery and leverage new technology to greatly improve our ability to support the citizens of San Antonio, the development community and Development Services customers; **NOW THEREFORE,**

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

SECTION 1. A contract with Gartner, Inc. providing the Development Services Department assistance with project initiation, strategy development, project planning, requirements gathering, developing an a Request for Competitive Sealed Proposal (RFCSP), and system selection for a total cost of $595,000.00, is hereby approved. A copy of the contract is attached hereto and is incorporated by reference as **Attachment 1**.

SECTION 2: The amount of $595,000.00 is appropriated for this ordinance in Fund 29097000, Cost Center 2904030001 and General Ledger 5201040 and the Fiscal Year 2014 Budget is amended to reflect this change.

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

SECTION 4: 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 5. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 30th day of January, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Robbie Greenblum, City Attorney

Agenda Item:	**21**
Date:	01/30/2014
Time:	12:14:41 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a professional services contract with Gartner, Inc. in an amount not to exceed $595,000.00 to assist in the requirements definition, strategy development, solicitation and response analysis of a Request for Competitive Sealed Proposals for a comprehensive land and building development management system software solution; and approving the appropriation of $595,000.00 from the Development Services Fund's fund balance. [Erik Walsh, Deputy City Manager; Roderick J. Sanchez, Director, Development Services]
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				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

FINAL DRAFT

PROFESSIONAL SERVICES AGREEMENT
FOR
Permit & Inspection Management System Consulting Services

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2014 and Gartner Inc. a Delaware Corporation with a place of business located at 56 Top Gallant Road, Stamford CT 06902 hereinafter referred to as the ("Consultant"). As used herein either the City or the Consultant may be referred to individually as a "Party" or 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 director of City's Development Services Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon the last party to execute the contract and terminate on January 31, 2015. At City's option, this Contract may be renewed under the same terms and conditions for one additional year period. Renewal shall be in writing and signed by Director and the Chief Technology Officer, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.

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

III. SCOPE OF SERVICES

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.

3.1 The City seeks a solution that will provide state-of-the-art technology for use by the **City's Development Services Department (DSD)**, plan reviewing agencies, other inspection service departments, citizens, contractors and developers to facilitate collaboration between all parties in order to provide an efficient and effective development process that supports City growth and economic development. This consists of the implementation of a comprehensive land and building infrastructure development and management system.

3.2 The goal of this comprehensive system is to replace various primary, integrated, and legacy systems including, but not limited to, the following:

3.2.1 Primary Systems Targeted for Replacement:

- **Plan, Permit, Inspections & License Management** – Application used to manage permits, contractors' licenses/registration and inspections.
- **Code Enforcement Tracking & Management** – Application used to manage code enforcement for residential & commercial properties/buildings.

3.2.2 Integrated Systems which may be included in replacement solution and/or require modifications to maintain integration with primary systems targeted for replacement:

- **Plat & Land Development Management** – "Land Development System" (LDS) and MS-Access database used for managing plan & plat applications, workflow processing and content management.
- **WEB Permitting** (Hansen-Dynamic Portal) – 3rd party web application used for applying & paying for permits, and schedule inspections.
- **Mobile Web Inspection Scheduler** – In-house developed WEB application used for scheduling active inspections via handheld devices (smartphones, tablets…)
- **Inspections Route Optimization** – Solution currently being solicited with a planned deployment date of December 2013. Primary function to optimize route plans for inspectors to complete assigned inspections for the current day. System also sends notices to inspection contacts alerting them of their place in the queue and potentially estimated time of inspection.
- **Contractor Notification** – Web application with minimal use for automated notifications to development community on inspection

results. Complex filtering functions have driven the development of less complex Customer Alerts system (H.)

- **Customer Alerts** – In-house WEB application used to alert customers of specific activity on permits status and inspection results.
- **Plat Management** – Mainframe application (TPLT) that contains historical Plats and used to manage the active platting process.
- **Mobile Inspector** – In-house WEB application used by field inspectors to capture inspection results using mobile device.
- **Electronic Plan & Plat Review** – Drawings redlining tool with integration to electronic repository for sharing and capturing development drawings during planning and platting services. Active project to deploy by year-end 2013 a web based application for external development community to submit drawings from their desktop as opposed to hand carrying hardcopies and/or electronic content via external drive/CD.
- **Zoning and Land Use Management** – Excel spreadsheets, Word documents and Access database used for managing zoning & board of adjustment applications, case management, non-conforming rights registrations, zoning verifications and alcohol variances
- **Health Inspections Management** – Used for managing licenses & permits, inspection scheduling, inspection results and billing. Activities related to food services and environmental safety (Public Pools, Boarding Homes, Air Quality, etc.)

3.2.3 Legacy Systems/Content which are to be evaluated for retention requirements and content migration recommendation/strategy:

- **Certificate of Occupancy** – Mainframe Application that contains historical records.

3.3 Consultant will provide City consulting service deliverables in three primary areas: 1) Verifying existing business requirements, identifying the gaps and finalizing a comprehensive business requirements document; 2) Prioritizing needs and developing an overall strategy for replacing two core applications while maintaining integration with and/or replacing other dependent sub-systems; and 3) Assisting with planning, executing and managing the request for competitive sealed proposal (RFCSP) process through selection of solution. Consultant efforts are divided into three phases consisting of seven separate steps with delivery dates detailed in Section IV *Compensation to Consultant* of this agreement:

3.3.1 Initiation Phase Finalize functional, technical and other requirements:

1. **Step 1. Initiate Project:**
   A. Conduct planning meeting(s) with City to prepare for kick-off meeting and initial planning sessions, and begin formulating High

Level Project Plan and Project Schedule. Key goals here are to identify key documentation and interview participants and agree on a preliminary interview schedule.

B. Attend project kick-off meeting to introduce team members and establish goals, objectives, scope, deliverables, responsibilities, resource requirements, timeline, reporting logistics, project electronic collaboration site and re-occurring meetings.

C. Consultant will hold weekly project status meetings to discuss accomplished tasks, planned tasks, and any issues. Consultant will submit a project status report and updated project schedule prior to each meeting.

D. City agrees to provide facilities and documents to facilitate Consultant's performance and participate in meetings.

a. Consultant Deliverables:

b. **High Level Project Plan** to include:

1. Finalized list of all project deliverables
2. Project Risk Assessment
3. Deliverables' Acceptance Criteria
4. Baseline Project Schedule
5. Roles and Responsibilities for the Project

c. **Weekly project status report**

2. **Step 2. Document Business Problem:**

A. Consultant shall review existing business process requirements/documentation and identify gaps. This data collection effort will involve a review of existing documents, interview with City internal staff and external stakeholders and market research. City agrees to identify key department staff to be interviewed and to provide facilities for meetings.

a. Document Review: Consultant shall request access to documented functional requirements and As-Is business processes as a starting point for document review as well as documents, if available, including:

1. City's Business Strategic Plan
2. City's Information Technology Strategic Plan
3. City's Communication Plan
4. City's Business Process Requirements/Documentation
5. City's Organization Chart
6. City's Project Governance Documents

7. City's IT and Program Budget information
8. Current system documentation and application inventory
9. Current data model and data analysis documentation
10. Previously gathered technical requirements

b. City agrees to provide requested documents in electronic format, if possible.

c. Conduct up to 15 structured individual/small group (maximum of 8 people per small group) interviews with City internal key executive and management-level stakeholders to develop vision of the new system and obtain executive buy-in on overall vision and project approach. Consultant will provide interviewees with questions and/or survey prior to the interview, allowing prepared responses in advance. Each interview will last between 1 and 2 hours and will focus on:

1. Current business processes, opportunities and 'pain points'
2. Current technical environment
3. Vision and desired outcomes for the new system
4. Administrative, budget, and technical issues
5. Security and privacy issues and remedies

d. Obtain input and updated documentation/artifacts from project stakeholders through face-to-face meetings, workshops, surveys or other agreed upon methods to close the gaps on existing business requirements.

1. **Updated Business Requirements Gap Analysis Report and Artifacts (As-Is).**
   i. **Business Process Flow Diagram**
   ii. **Technical Architecture Diagram**
   iii. **Service Level Agreements**
   iv. **Maintenance and Support Agreements**
   v. **Technical Support Structure**
   vi. **User and Administration guides/manuals**

e. Consultant Deliverable: **Business Requirements Gap Analysis Report**

B. Consultant will create an as-is view of the business systems and their relationships based on provided documentation and refined through conducted interviews. This as-is system will be the basis to identify integration points and conversion needs for the to-be solution, and to define integration and data migration requirements.

City agrees to provide documentation of current business systems and to review and provide feedback to Consultant.

a. Consultant Deliverable: **High Level Business Systems Relationship Diagram (AS-IS)**

3. **Step 3. Develop Strategy:**

A. Refine/validate overall vision for the Hansen/ECCO Replacement project. As part of this development, parties will collaborate to identify an ideal future-state vision for customer centric services that are tailored to address the business challenges, opportunities, and guiding principles starting with the development of a high-level services concept that will underpin the future-state vision. As services are identified, refined and validated with the City, the high-level customer centric services model will emerge. Services will be logically organized representative to City's services concepts and goals. Consultant shall provide a preliminary costs/benefits analysis of the replacement system to City. Consultant will prepare a presentation outlining the vision, mission, high-level strategy, cost, financial benefits, and the projected plan, and deliver to the Project Steering Committee for approval to proceed. An updated project budget estimate for outlined services will also be provided. City agrees to review the Vision and Mission Statement, Project Charter, Preliminary Business Case. The Project Steering Committee will meet at a minimum, twice a month, with the primary responsibility to ensure that the project is moving on schedule. The Project Steering Committee will also review key milestone deliverables and approve and/or make recommendations for project Governance Board.

a. Consultant Deliverables:

1. **Prepare a Vision/Mission Statement.**
2. **Prepare Project Charter based Project Management Institute Standards.**
3. **Cost and Financial Benefits Analysis**
4. Present to Project Steering Committee for acceptance and approval to proceed
5. **Updated Project Budget Estimate.**

3.3.2 Planning Phase. The following planning deliverables must adhere to Project Management Body of Knowledge aligned and will require collaboration and approval by the Project Management Team to finalize deliverables content and format.

4. **Step 4. Develop Future State Business Requirements:**

A. **Finalize To-Be Business & Systems Requirements documentation.** This deliverable will contain the final To-Be Business and System (Technical) requirements that includes feedback and edits provided by the City based on the draft Business and System (Technical) requirements delivered in 4B and 5A.

   a. Consultant Deliverable: **Finalize To-Be Business & Systems Requirements.**

B. **"To-Be" Business Processes (Use Cases).** "To-Be" business process workflows will be engineered from previously developed "As-Is" workflows or updated from previously developed "To-Be" workflows, utilizing guiding principles and business imperatives through an iterative process, coupled with development of the system's Conceptual Model and requirements. Consultant shall use "functional use cases" as a tool to document real life scenarios in order to gauge how a technology would work if implemented with a specific function proposed. This tool is utilized as a means to bridge the gap between needs and investments.

   "To-Be" business process workshops will be held with City's functional subject matter experts (SMEs) for each identified functional category in the high-level functional work streams, as more particularly described in Section XXVII. These workshops are conducted to assist in defining functional use case scenarios that form each work stream category.

   Upon completion of data gathering activities, Consultant shall identify which functions must be captured in a Use Case format in order to derive the business requirements. Consultant shall conduct between 8 and 10 full day workshops and utilize gathered information to develop between 30 and 50 Use Cases.

   a. Consultant Deliverable: **Use Cases.**

C. **Document Functional Requirements (Draft for City's review).** Consultant will decompose each in-scope process to the functional, integration and other requirements with the overall goal of defining requirements in the City business process context. Said requirements shall serve as a basis for subsequent activities such as the facilitation of downstream design efforts and business rule documentation manageable in an automated tool to be performed by City and/or the selected implementation vendor, which is outside the scope of this agreement. **All feedback and comments**

from the City will be incorporated into the final deliverable 4A.

Mapping of requirements into functional "buckets" that lend themselves to evaluation of a comprehensive land and building infrastructure development and management commercial off the shelf (COTS) software solutions shall be included in this process.

a. Consultant Deliverables:
   1. **Functional Requirements including classification of requirements as mandatory or desired based on input provided by City.**
   2. **Requirements Traceability Matrix.**

5. **Step 5. Develop Solution Implementation Plan:**

   A. Consultant will collaborate with City to develop the future state Conceptual Model and Technical Requirements of the solution to meet defined business requirements. Once defined, Consultant shall develop a Solution Implementation Plan that defines the implementation strategy for City's replacement system. Consultant shall conduct a market analysis to identify alternative solutions that meet City's requirements and assist with alternatives analysis for the best implementation option.

   B. **Conceptual Model and Technical Requirements (CMTR).** Consultant will collaborate with City to develop the future CMTR during the "To-Be Use Case" workshops in order to identify the "To-Be" technical conceptual model by analyzing the current state of technologies within the City and documenting and validating a realistic system architecture required to support the evolving future-state roadmap that is being developed. This result can also be utilized to enforce internal City technical and architectural standards as they relate to future land management implementation efforts. City is responsible for providing access to technical resources and documentation.

   Consultant will draft a set of technical architecture requirements to support the previously developed Use Cases and functional requirements. Said set of technical requirements will be reviewed to ensure communication requirements in:
      1. Usability
      2. Scalability
      3. Capacity
      4. Performance
      5. Infrastructure requirements
      6. Data conversion/migration requirements

7. Interface/integration requirements
8. Personalization

Upon completion, Consultant will validate the technical requirements with appropriate City resources. Consultant will communicate with City's technical resource as necessary to clarify or augment the set of technical requirements for accuracy and comprehensiveness purposes.

Consultant will also facilitate between 3 and 5 workshops with key stakeholders to review conceptual architecture, define the high level solution architecture, develop standards and finalize the system context diagram. These workshops will result in a conceptual model and recommended technical architecture and facilitate downstream procurement activities.

a. Consultant Deliverables:
   1. **Conceptual Model (Draft for City's review)**
      All feedback and comments from the City will be incorporated into final deliverable 5C.

   2. **Technical Requirements (Draft for City's review)**
      All feedback and comments from the City will be incorporated into final deliverable 4A.

C. **Develop Solution Implementation Plan.** Consultant will prepare the Solution Implementation Plan that outlines the implementation strategy by first identifying alternative solutions through the combination of application and solution options with implementation options. Consultant, as well as systems integration firms, will research potential solutions to assist in viable alternative development for the future. Consultant will develop two brief Requests for Information (RFIs) to be sent to 1) permitting and licensing vendors, and 2) systems integration firms. Consultant will develop questions and evaluation factors for each. Once identified, Consultant will produce possible release schedules for each solution. Consultant will also collaborate with City to create evaluation criteria to be utilized in alternative assessments. Confirmation will be made with City re the alternatives and evaluation criteria prior to recommending a proposed solution. A solution implementation plan will be prepared by Consultant to describe the selected solution and implementation strategy, and includes the final Conceptual Model.

a. Consultant Deliverable: **Solution Implementation Plan.**

6. **Step 6. Develop Procurement Strategy:**

   A. Consultant will collaborate with City to determine an implementation strategy and roadmap to implement the future state vision defined in this agreement.

   B. To prepare for procurement activities, Consultant shall create an RFCSP schedule with which to develop the RFCSP, evaluate responses, and select a vendor/integrator. Consultant will prepare an executive summary and presentation to the Project Steering Committee for acceptance and approval to proceed.

      a. Consultant Deliverables:

         1. **RFCSP Schedule.**

         2. **Executive Summary and Presentation** (This falls under the presentation item at $0 cost under each phase – Initiate, Planning & Procurement)

   C. Consultant will develop a bottom-up cost estimate (Total Cost of Ownership (TCO)) based on industry data and internal expertise. The Request for Information (RFI) performed in development of the Solution Implementation Plan will provide industry information to validate the technology and cost assumptions. Figures provided in Consultant's attached proposal as described in section XXVII may be utilized as a sample.

      a. Total Cost of Ownership (TCO) shall include:

         1. Software

         2. Hardware

         3. Professional Services

         4. Yearly maintenance and support

      b. Consultant Deliverable: **Total Cost of Ownership (TCO) Estimate.**

   D. Consultant shall develop preliminary project, risk management, and communications plans for the procurement and implementation of the new system based on City's selected solution. Consultant will work with the City's project team to develop the project plan, risk management plan, and the communications plan. Consultant shall confirm key elements of each Plan with City prior to submission.

a. The Project Plan will demonstrate the City's approach to project management including the roles and responsibilities of project members, the proposed project schedule and the project management methodology to be applied by any selected vendor.

b. The Risk Management Plan will articulate risks identified to date, probability associated with those risks, and proposed mitigation strategy.

c. The Communications Plan will identify all business stakeholders and outlines all communications necessary between stakeholders. Consultant will create the recommended communication plan in collaboration with stakeholders and reviewed and approved by the Steering Committee.

d. Consultant Deliverables:

1. **Project Plan (including a project timeline with milestones, deliverables, resources and cost).**

2. **Risk Management Plan + Issue/Risk Register*.**

   * List of issues & risks identified throughout the lifecycle of the project. The value of these is to understand potential risks and have a mitigation planned defined to execute should the risk become a reality. Both issues & risks become part of a COSA PM Lessons Learned document to avoid risk/issue in future projects.

3. **Communications Plan.**

4. **Prepare presentations and deliver Planning Phase summary to Project Steering Committee.**

3.3.3 Procurement Phase. Deliverables listed in this section require collaboration and guidance from the City's Procurement Department to ensure that City standards and guidelines are met.

7. **Step 7. Evaluate Vendor/Integrator and Support Selection**

A. Consultant shall perform market analysis for City's Small Business Economic Development Program (SBEDA). Said data/market-driven analysis can be used to quantify the particular areas of the total estimated value and the resulting solicited scope that can be delivered in a commercially viable manner in support of the City's Economic Development goals. The final report is required to be delivered in Word, Excel or any other pre-approved format.

a. Consultant Deliverable: **Market analysis for City's Small**

Business Economic Development Program.

B. Consultant shall assist in the preparation of a comprehensive RFCSP to be released to the prospective vendor(s) responsible for meeting the City's needs as identified in this agreement. The RFCSP will be developed in accordance with City's purchasing guidelines and requirements. The RFCSP will provide participating vendors with uniform "ground rules" on which to prepare their proposals. The RFCSP will contain a scope & desired solution narrative, diagrams; experience, background, qualifications questionnaire; proposed plan questionnaire; proposed solution questionnaire; business functional requirements questionnaire; and pricing schedule. Additionally, the RFCSP shall include implementation services for the configuration and implementation of selected software and enhancement/development of any customer facing Internet presence/portal. Consultant is required to 1) prepare a Draft and Final RFCSP and 2) assist with Vendor Questions and RFCSP Addenda when requested to do so.

a. Consultant Deliverable: **Draft and Final RFCSP in Microsoft Word format.**

C. Consultant shall develop the Evaluation and Selection Plan that will include the process the City will utilize to evaluate vendor responses. The Plan will describe the organizational, business, technical and cost criteria to be used in proposal evaluation and assessment. Consultant shall also design and prepare the evaluation material to be used in the vendor selection process, including the functional and cost evaluation tools and the Vendor Reference evaluation tools. The evaluation structure and scoring tools shall be developed in accordance with City policy, Procurement and ITSD guidelines.

a. Consultant Deliverables:

1. **Evaluation Logistics Plan**
2. **Evaluation Matrix**
3. **Vendor Reference Questionnaire** (*part of RFCSP development)

D. Consultant shall provide ongoing advisory support services in the amount budgeted in Section IV Compensation to Consultant.

a. Consultant Deliverables:

1. Participate in Respondent Pre-Submittal Conference
2. Prepare and compile responses to vendor requested clarifications

3. Compile Vendor Scoring Matrix (based on input provided by the City's evaluation committee)
4. Compile Final Evaluation (Vendor Analysis and Financial Analysis Matrix) for top 3 vendors (based on input provided by the City's evaluation committee)

3.4 Additional Requirements

3.4.1 Assumptions. The deliverables, schedule and pricing in this contract are based on the following assumptions:

1. The City will designate a project manager to act as the primary point of contact for this project. The City project manager will be expected to work closely with Consultant as needed and will: (a) approve project priorities, detailed task plans and schedules; (b) facilitate the scheduling of Consultant interviews with appropriate client personnel; (c) notify Consultant in writing of any project or performance issues; and (d) assist in resolving project issues that may arise.
2. The City is to schedule City resources for project activities, attend required meetings, and provide meeting facilities as necessary.
3. All data collection and interviews/workshops will take place via telephone or in person at City offices as described in this contract and/or as agreed to at the project kickoff.
4. The City will provide timely access to all appropriate personnel to be interviewed. These personnel will have the ability to provide data necessary to complete this project, answer questions, provide existing documentation and attend working sessions.
5. Any requests for additional information (beyond the details described in the tasks above) that City makes will be considered a change in scope for this engagement and will be handled accordingly (see Changes to Scope section below).
6. The City will review and approve deliverables within ten City business days (exclusive of weekends and holidays). If no formal approval or rejection is received within that time, this triggers a reassessment of the deliverable timeline through a change order. For each deliverable, the City's Project Manager or designated representative will consolidate all deliverable feedback and edits into a single document for Gartner to incorporate into the final deliverable. The following key deliverables materially inform or drive subsequent dependant deliverables and, as such, time is of the essence for the City's review and approval of such deliverables:
    a. Finalize To-Be Business & Systems Requirements

b. Role Activity & Narrative Description [To-Be Process (Use Cases)]

c. Solution Implementation Plan (Conceptual Model; Market Analysis; Vendor RFI; Alternatives analysis; Roadmap)

d. Functional Requirements (Mandatory/Desired) (Draft for review)

e. Technical System/Non-Functional Requirements (Draft for review)

3.4.2 Project Deliverables Standards

1. Deliverables must be completed based on agreed upon timeframes. Changes to the delivery date must have prior approval (in writing) by the Contract Compliance Officer or designee. Both the City and Consultant agree that each party is dependent on the other to timely complete supporting tasks and activities that are required for deliverable development.
2. All deliverables must be submitted in a format approved by the Project Management Team.
3. All deliverables must be in original unprotected file format (Excel, Word, Visio, PowerPoint, and Project). In addition, final deliverables will also be delivered in PDF & hardcopy format for signatures.
4. All deliverables must have acceptance criteria established and a time period for review and/or acceptance.
5. If a deliverable cannot be provided within the scheduled timeframe, the Consultant must contact the Contract Compliance Officer in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
6. A request for a revised schedule must be reviewed and approved by the Project Management Team before placed in effect, not to be unduly withheld. Contract Terms and Conditions may dictate penalties, costs, and other actions based on the facts related to the request for a revised schedule.
7. The Project Management Team will complete a review of each submitted deliverable within specified working days for the date of receipt.
8. All project constraint changes must follow established change control procedures and allow reasonable time for review and approval processes.

3.4.3 Reports and Meetings

1. Consultant must provide the Project Management Team with weekly written project progress reports. These are due to the designated Project Manager by the close of business on the specified day and

time on a bi-weekly basis throughout the life of the project.

2. The progress reports will cover all work performed and completed for which the progress report is provided and shall present the work to be performed during the subsequent week.
3. The progress report will identify any problems encountered or still outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved. This progress report must also include any newly identified risks, and known risks.
4. Consultant is responsible for conducting weekly status meetings with the Project Management Team. The meetings will be held on an agreed upon specified day of each week - at a time and place so designated by the designated Project Management Team - unless revised by the City. The meetings can be in person or over the phone based on the discretion of the Project Management Team and Consultant.

3.4.4. Changes to Scope or Schedule. All requests for changes must be in writing using Task Orders. Consultant shall advise City of the cost and schedule implications of the requested changes and any other necessary details to allow both parties to decide whether to proceed with the requested changes. The parties shall agree in writing upon any requested changes prior to Consultant commencing work. As used herein, "changes" are defined as work activities or work products not originally planned for or specifically defined by this agreement. By way of example and not limitation, changes include:

1. Any activities not specifically set forth in this Agreement
2. Providing or developing any deliverables not specifically set forth in this agreement
3. Any change in the respective responsibilities of Consultant or City set forth in this agreement, including any reallocation or any changes in engagement or project manager staffing
4. Any rework of completed activities or accepted deliverables
5. Any investigative work to determine the cost or other impact of changes requested by either Party
6. Any additional work caused by a change in the assumptions set forth in this agreement
7. Any delays in deliverable caused by a modification to the acceptance criteria set forth in this agreement
8. Any changes requiring additional research analyst time or changes to research analyst resources

3.4.5. Task Orders. Task Orders will be used to manage amendments to this agreement. Amendments include additional deliverables-based services, extension to period of

service, and any changes to the scope, services, timeline, or deliverables of existing approved work. A sample Task Order template is included below.

Gartner	TASK ORDER FORM	City of San Antonio SOW #

Purpose:
Task Summary

Task Order Number	Task Order Number:	**Task Order Create Date**	
Task Order Name		**Task Order Fixed Fee Cost**	
RRC Project Manager		**Gartner Project Manager**	
Task Order Approval By:		**Task order Approval Date**	
Task Order Objectives	•		

AGREED ON BEHALF OF GARTNER, INC.

SIGNATURE

PRINT NAME AND TITLE

DATE

AGREED ON BEHALF OF CITY OF SAN ANTONIO

SIGNATURE

PRINT NAME AND TITLE

DATE

TASK DETAIL

Task Order

3.5 Consultant Pricing Sheet for Hourly Rates

Roles	Hourly Rate
Managing Partner	$450
Senior Director	$395
Director	$365
Associate Director	$305
Senior Consultant	$245
Consultant	$190
Associate Consultant	$160

All work shall be performed in a professional and workmanlike manner in accordance with applicable Contract Specifications for said Deliverable. All Deliverables shall be accepted and approved by the Director or his designee in accordance with the Deliverable(s) acceptance criteria articulated in this Contract for the specific Deliverable. The City shall be under no obligation to pay for any Deliverable that does not materially comply with its applicable Contract Specification(s). The City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's performance or lack of performance breach any material provision of this Agreement.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director (or his designee) in accordance with the "acceptance criteria" consisting of prior submission for review and approval of final deliverable format/content further reflected throughout this agreement for all services and activities set forth, City agrees to pay Consultant an amount not to exceed $595,000.00 as total compensation, to be paid to Consultant as follows:

Note: The Due Date is an estimated completion date for each deliverable based on the actual Contract Start Date (CSD) plus a specified number of business days. For example, if the Due Date is "CSD + 7" and the CSD is 1/20/2014, then the estimated Due Date is 1/28/2014). The project schedule will contain the actual deliverable due dates based on the CSD and any other changes to the timeline as mutually agreed between the City and the Consultant.

Deliverable	Cost	Due Date
[illegible]	[illegible]	
High Level Project Plan	**$11,900.00**	**CSD + 14**
Business Requirement Gap Analysis Report	**$41,650.00**	**CSD + 25**
High Level Business Systems Relationship Diagram (As-is)	**$29,750.00**	**CSD + 25**
Vision/Mission Statement	**$5,950.00**	**CSD + 25**
Validation of Acceptance from Stakeholders		
Project Charter	**$5,950.00**	**CSD + 25**
Business Process Flow Diagram Technical Support Structure Analysis (Updated Business Requirements Gap Analysis Report and Artifacts (As-Is))	**$23,800.00**	**CSD + 25**
Technical Architecture Diagram		
Service Level Agreements		
Maintenance and Support Agreements		
Technical Support Structure		
Use and Administration guides/manuals		
Updated Project Budget Estimate	**(no charge)**	**CSD + 25**
Preliminary Cost & Financial Benefits for Replacement Systems	(no charge)	
Presentation	**(no charge)**	**CSD + 25**
[illegible]	[illegible]	
Finalize To-Be Business & Systems Requirements	**$17,850.00**	**CSD + 93**
Role Activity & Narrative Description [To-Be Process (Use Cases)]	**$65,950.00**	**CSD + 75**
Solution Implementation Plan (Conceptual Model; Market Analysis; Vendor RFI; Alternatives analysis; Roadmap)	**$65,950.00**	**CSD + 108**
Functional Requirements (Mandatory/Desired) (Draft for review)	**$59,000.00**	**CSD + 75**
Technical System/Non-Functional Requirements (Draft for review)	**$59,000.00**	**CSD + 75**
Technical Architecture Requirements (driven by ITSD standards)		
Systems Integration Requirements (driven by ITSD standards)		
Data Migration Requirements		
Requirements Traceability Matrix (included in Functional Requirements deliverable and Technical System/Non-Functional Requirements deliverable)		
RFCSP Schedule	**$17,850.00**	**CSD + 77**
MS-Project Plan (milestones, deliverables, resources, cost)	**$17,850.00**	**CSD + 108**
Estimated Total Cost of Ownership (TCO)	**$17,850.00**	**CSD + 108**
Software		
Hardware		
Professional Services		
Yearly Maintenance & Support		
Risk Management Plan; Issue/Risk Register	**$17,850.00**	**CSD + 123**
Communications Plan	**$17,850.00**	**CSD + 123**
Prepare Presentations and deliver Planning Phase summary to Project Steering Committee	**$ (no charge)**	**CSD + 139**
[illegible]	[illegible]	
Market Analysis for COSA's Small Business Economic Development Advocacy Program*	**$10,000.00**	**CSD + 123**
Develop RFCSP supportive documentation:	**$37,600.00**	**CSD + 170**

RFCSP – Scope & Desired Solution Narrative, Diagrams		
RFCSP – Experience, Background, Qualifications Questionnaire		
RFCSP – Proposed Plan Questionnaire		
RFCSP – Proposed Solution Questionnaire		
RFCSP – Business Functional Requirements Questionnaire		
RFCSP – Pricing Schedule		
Evaluation Matrix	**$11,900.00**	**CSD + 185**
Evaluation Logistics Plan	**$11,900.00**	**CSD + 185**
Ongoing Advisory Support	**$47,600.00**	**CSD + 385**
Participate in Respondent Pre-Submittal Conference		
Maintain RFCSP potential Respondent inquiries registry		
Prepare responses to questions from Pre-Submittal Conference or emails		
Compile Vendor Scoring Matrix (based on input provided by the City's evaluation committee)		
Compile Final Evaluation (Vendor Analysis and Financial Analysis Matrix) for top 3 vendors (based on input provided by the City's evaluation committee)		
Total:	**$595,000.00**	

*** Delivery of a data/market-driven analysis** must be delivered to City in a commercially viable manner in support of the City's Economic Development goals that could be used to quantify the particular areas of the total estimated value and the resulting solicited scope. Final report can be in Word, Excel or any other pre-approved format.

4.2 Consultant shall submit monthly invoices including a description of the deliverables corresponding with the estimated delivery schedule reflected in the table above in a form acceptable to City. City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Department of Development Services, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City unless otherwise provided for by a Task Order as set forth in section 3.5. 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 City.

4.4 Final acceptance of work products and services require written approval by City, not to be unduly withheld. The approval official shall be Director or designee unless City approval is provided for otherwise. Payment will be made to Consultant following written approval of the final work products and services by Director or designee unless City approval is provided for otherwise. City understands that Consultant deliverables as provided for in this agreement generally progressively build on each other and that time is of the essence with respect to City, Director or designee or City Council approvals. 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 *Ownership of Prior Rights by City* – All tangible and intangible property including the Intellectual Property Rights therein, which is owned by City prior to the execution of any Statement of Work (e.g. copyrights, trademarks, etc.) shall to be exclusively owned by the City and Consultant shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such property for purposes set forth in a Statement of Work and only for the duration of such Statement of Work which is hereby granted to Consultant by City.

5.2 Ownership of Prior Rights by Consultant - All tangible and intangible property including the Intellectual Property Rights therein, which is owned by Consultant prior to the execution of any Statement of Work (e.g. pre-existing tools, processes, methodologies, proprietary research data and proprietary databases) (hereinafter "Pre-existing Gartner IP") shall continue to be exclusively owned by the Consultant and City shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such Pre-existing Gartner IP for internal business use, solely for purposes set forth in a Statement of Work and only for the duration of such Statement of Work which is hereby granted by Consultant.

5.3 Ownership of Pre-Existing Rights Embodied in Deliverables – To the extent any pre-existing rights or property of either party are embodied or contained in the Works or a Deliverable, each party retains ownership of its pre-existing rights and property (e.g. City ownership of the Works that include Pre-existing Gartner IP shall extend only to the additional work product or deliverables that do not comprise such Pre-Existing Gartner IP). Each party hereby grants to the other a irrevocable, perpetual, non-exclusive, worldwide, royalty free right and license to use, execute, reproduce and display, perform and distribute copies of the Works as necessary for their business purposes or to enjoy the benefits of the services to be provided under a Statement of Work (and provided further that Consultant does not identify City by name or otherwise use any of City's confidential or proprietary information).

5.4 Benchmark/Measurement Reports – With respect to any measurement of benchmarking services that may be performed by Consultant under any Statement of Work, the parties acknowledge and agree that (i) the contents of such measurement report(s) may be based in part upon information which is proprietary to Consultant and contained in Consultant's proprietary data base, (ii) the contents of such database belong solely to Consultant, (iii) City's raw data will become part of such database, (iv) Consultant will code any presentation of Citys raw data to preserve City anonymity, and (v) the proprietary database may be used by Consultant in future consulting and measurement engagements.

5.5 *Ownership of Deliverables* - Subject to payment of fees specified in an applicable SOW, Consultant grants to City ownership of any Deliverable originally created for and submitted to City. Unless the Deliverable is a Request for Proposal (RFP) or similar document intended to be distributed by City to the public, City shall not make the Deliverables available, in

whole or in part, to anyone outside of City, or quote excerpts from the Deliverables to the public, without the prior written consent of Consultant. Notwithstanding the foregoing, City may share the Deliverables with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with City and/or who are engaged by City to review or implement suggestions or to further research the issues contained in the Deliverables or any other City internal business purpose, and (iii) governmental or regulatory bodies as required by law to include the Texas Public Information Act.

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

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

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 the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event,

Consultant may retain a copy of the documents.

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 City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. In the event of a termination without cause Consultant is due its cost incurred for the work-in-progress on any deliverable that had been started and not completed at such date that the termination is effective.

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 30 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 30-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 seek an offset of 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 Bankruptcy or selling substantially all of company's assets
7.4.2 Failing to perform or failing to comply with any covenant herein required
7.4.3 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 effect 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, which the City has paid for 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 ninety (90) 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 ninety (90) 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

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
Development Services Department
Teresa Kannawin
1901 S. Alamo
San Antonio, TX 78204
(210)207-6535

If intended for Consultant, to:

Gartner
Rob Cohan
Urban Towers Suite
1220 North 12th Floor
Irving, TX 75039
(972)892-7018

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an Insurance ACCORD and copies of all required endorsements to the City's Development Services Department, which shall be clearly labeled *"Permit & Inspection Management Consulting Services"* and include and evidence the acquisition of all agreed upon insurance coverages.

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

10.3 A Consultant's financial integrity is of interest to the 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, 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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $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	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability f. Damage to property rented by you	f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Professional Liability (Claims Made) 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.

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

10.5 RESERVED

City of San Antonio
Attn: Development Services Department
C/O: Teresa Kannawin
1901 S. Alamo
San Antonio, TX 78204
(210)207-6535

10.6 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 insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the

City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

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

10.7 Consultant shall employ commercially reasonable efforts to advise City within thirty (30) days of any cancellation or any Consultant internal determination to effect a material change in the insurance coverage's listed herein and/or maintained by Consultant in support of this agreement.

10.8 In addition to any other remedies the 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, the 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.

10.9 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.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

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

XI. INDEMNIFICATION

11.1 Indemnity for Tangible Property: **CONSULTANT 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 resulting from the negligent acts and/or omissions of the CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal**

injury, death, or property damage. IN THE EVENT 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.

11.2 Indemnity for Intangible Property: Upon notification of a claim against City alleging any Deliverable infringes a copyright, US patent or trade secret of any third party, Consultant will defend such claim at its expense and will pay any costs or damages that may be finally awarded against City. Consultant will not indemnify City however, if the claim of infringement is caused by (1) City's misuse or modification of the Deliverable; (2) City's failure to use corrections or enhancements made available by Consultant; (3) City's use of the Deliverable in combination with any product or information not owned or developed by Consultant . If any Deliverable is, or in Consultant's opinion is likely to be, held to be infringing, Consultant shall at its expense and option either: (a) procure the right for City to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing, or (d) direct the return of the Deliverable and refund to City the fees paid for such Deliverable.

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 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use Smartbridge, LLC as its subcontractor in the performance of this Agreement. Any deviation from this listed subcontractor, whether in the form of deletion, additions or substitutions shall be approved in writing by the Director or authorized designee 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 Director, 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.

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 Director effective

by amendment in according with Section XVI. Amendments. 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

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 "respondeat 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. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

14.1 Solicitation Response and Contract Requirements and Commitment. Consultant understands and agrees that the following provisions shall be requirements of this contract and by submitting its Response, Consultant commits to comply with these requirements.

14.2 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary

manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

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

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount

the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Consultant to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if Consultant 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 Consultant 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 Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

Good Faith Efforts – documentation of the Consultant'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 consultant's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of

Consultant's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

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

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

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

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

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

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor (Consultant) 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 Consultant and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Consultant's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

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

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

14.4 SBEDA Program Compliance – General Provisions. As Consultant 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 Consultant's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being

awarded this contract by the CITY. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

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

14.4.2 Consultant 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 Consultant or its Subcontractors or suppliers;

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

14.4.4 Consultant shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant'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 Consultant 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 Consultant of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

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

14.4.6 Consultant shall retain all records of its Subcontractor payments for this

contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

14.4.7 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 Consultant's Subcontractor / Supplier Utilization Plan, the Consultant 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 Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

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

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

14.6 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Consultant 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, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

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

14.8 Violations, Sanctions and Penalties. In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

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

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

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

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

14.8.5 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 Consultant or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

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 Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, 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 the City. Consultant further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

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. The Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

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

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

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

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. LIMITATION OF LIABILITY

Neither party shall be liable for any consequential, indirect, special or incidental damages, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the Services, whether or not advised of the possibility of such damages. Except for liability for personal injury or death or for damage to property caused by the negligence or willful misconduct of Consultant or its employees, Consultant's total liability arising out of this Agreement and the provision of the Services shall be limited to the fee paid by City under the Statement of Work under which such liability arises.

XXII. NO 3rd PARTY BENEFICIARIES

This Agreement is for the benefit of the parties only. None of the provisions of this Agreement are for the benefit of, or enforceable by, any third party. It is the intention of Consultant and City that no third party shall have the right to (i) rely on the Services provided by Consultant, or (ii) seek to impose liability on Consultant as a result of the Services or any Deliverables furnished to City.

XXIII. 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.

XXIV. LEGAL AUTHORITY

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.

XXV. PARTIES BOUND

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.

XXVI. CAPTIONS

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.

XXVII. INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

1. Gartner Proposal dated September 12, 2013
2. RFCSP# 6100003120 (RFP 2013-074)

XXVIII. ENTIRE AGREEMENT

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

XXVIX. PROHIBITED CONTRIBUTIONS

29.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant

understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

29.2 Consultant acknowledges that the City has identified this Agreement as high profile.

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

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

CITY OF SAN ANTONIO

_____
(Signature)

Printed Name: **Roderick Sanchez**
Title: **Director, Development Services, City of San Antonio**
Date: _____

_____
(Signature)

Printed Name: **Hugh Miller**
Title: **Chief Technology Officer, Information Technology Services Department**
Date: _____

CONSULTANT
Gartner Inc.

_____
(Signature)

Printed Name: **Phillip A. Cummings**
Director, Government Contracts
Title: **Director, Government Contracting**
Date: 17 January 2014

FINAL DRAFT

_____

_____

Approved as to Form:

_____

Assistant City Attorney

Item # 21

City Council Review

Permit Inspection Management System Consulting Services

for
Hansen/ECCO Replacement

Strategy, Roadmap, Solution Solicitation

January 30, 2014

Agenda Item: 13-1276

Hansen / ECCO Replacement
Development Services & ITSD

- Contract for consultant services to oversee the implementation of a land and building infrastructure development & management system
  - Project initiation
  - Project planning and Project Management services
  - Strategy development
  - Requirements gathering (including As Is and To Be process definitions)
  - Incorporate gathered information into Request for Proposal (RFP)
  - Assist with solution selection process
- Consultancy with municipal and development services experience
  - Permitting
  - Licensing Registration
  - Inspections Management
  - Land Development
  - Code Enforcement

2

Hansen / ECCO Replacement
Development Services & ITSD

- Current Development Services system (Hansen)
  - Deployed 11 years ago at a cost of over $8 million
  - Initial project took over 2 years to go-live and the City had to customize it to handle the volume of permits and advanced business processes based on City codes
  - Hansen is supported by ITSD and contractors since vendor doesn't support our version any longer
- Current Code Compliance system (ECCO)
  - Developed in-house on the mainframe many years ago
  - Mainframe is being phased out of the City's infrastructure and support model
  - One of the last few business systems left on mainframe
  - Works with Customer Relationship Management (CRM/311) - supported by ITSD
- Development Stakeholders have expressed concerns with the current system

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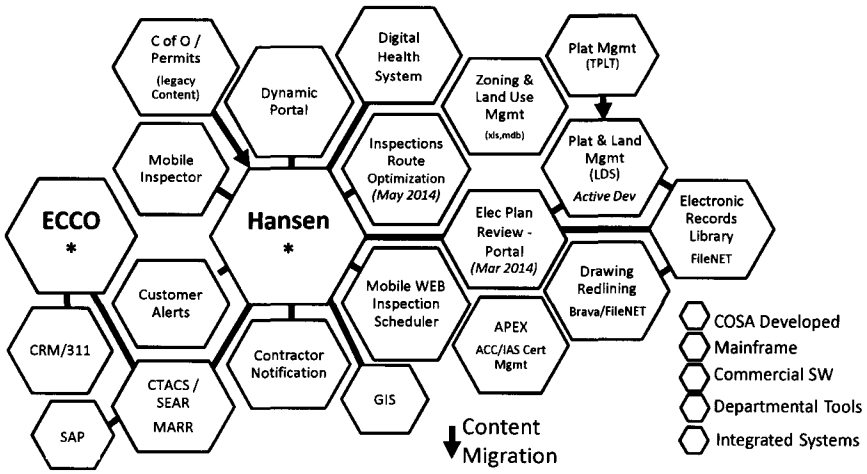
Hansen / ECCO Replacement
Development Services & ITSD

Project Scope – Business Systems Replacement or Integration



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Hansen / ECCO Replacement
Development Services & ITSD

Program Scope - Business Stakeholders

➢**Primary Stakeholder**
- **Development Services**
- Code Compliance

➢**Other Departments**
- Aviation
- Customer Service (311)
- Department of Human Services
- Finance
- Fire Marshal / SAFD
- Metropolitan Health District
- Office of Historic Preservation
- Public Works

➢**Outside Agencies**
- CPS Energy
- San Antonio Water System

Other Potential Services
- Animal Care Services
- Convention & Visitors Bureau
- Downtown Operations
- Solid Waste Management
- Police

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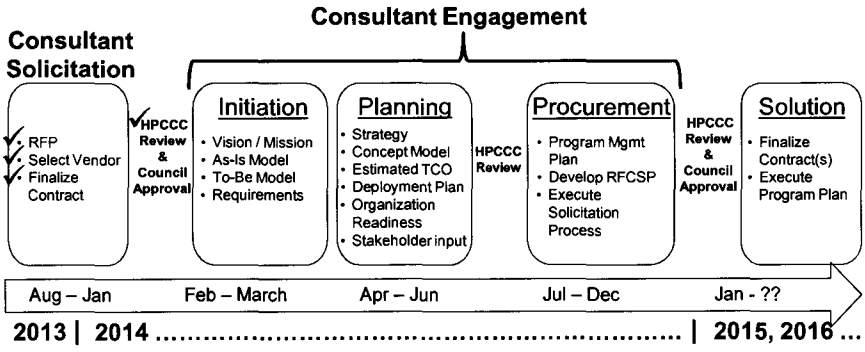
Hansen / ECCO Replacement
Development Services & ITSD

Program Overview

➢ Permit & Inspection Strategy Development

➢ Selected solution(s) will be managed as a program (multiple projects), deployed over a multi-year period.



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Hansen / ECCO Replacement
Development Services & ITSD

Procurement Overview

- Originating Department: Development Services
- Solicitation Type: Request for Proposal (RFP)
- High Profile Designation: Not required, but presented this RFP to HPCCC on December 10
- Solicitation Status: Council Agenda for Approval to Proceed
- Estimated Value: $595,000
  - Funding Source: DSD Reserve for Software Replacement
- Proposed Term: Upon award through January 2015 with one, one year option to renew if additional services are needed

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Hansen / ECCO Replacement
Development Services & ITSD

Significant Dates

- RFP Released – July 19, 2013
- Pre-Submittal Conference – August 5, 2013
- Deadline for Questions – August 20, 2013
- RFP Proposals Due – September 16, 2013
- Evaluation Complete – November 11, 2013
- HPCCC Review – December 10, 2013
- Contract Finalized – January 17, 2014
- City Council – January 30, 2014
- Target Contract Start Date – January 31, 2014

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Hansen / ECCO Replacement
Development Services & ITSD

Recommendation

- Staff recommends approval to proceed with Gartner contract
- Allocate $595,000 to departmental budget for Gartner contract
  - **Financial Source** - Development Services Funds Reserve for Software Replacement

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City Council Review

Permit Inspection Management System Consulting Services

for
Hansen/ECCO Replacement

Strategy, Roadmap, Solution Solicitation

January 30, 2014

Agenda Item: 13-1276