LB
06/18/15
Item No. 41

AN ORDINANCE 2015-06-18-0567

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT FOR THE DEVELOPMENT OF A LA VILLITA ADVERTISING AND MARKETING PLAN WITH CREATIVE CIVILIZATION FOR AN AMOUNT NOT TO EXCEED $200,000.00

* * * * *

WHEREAS, as part of a comprehensive and proactive approach to the transformation of the La Villita Historic Arts Village, the development of an Advertising and Marketing Plan is needed to help bring La Villita into the 21st century and become a vital part of the "Decade of Downtown"; and

WHEREAS, on January 30, 2015, a Request for Proposals was issued to solicit responses from qualified firms interested in providing marketing and design services for the La Villita Historic Arts Village, including the development of a new logo and identity package, branding guidelines and color pallet scheme, the creative design of infographics to be used in printed materials, online, interactive and social media efforts, public relations initiatives, and a new branding scheme for the La Villita web page on the Department for Culture and Creative Development website; and

WHEREAS, twelve proposals were received and reviewed by an Evaluation Committee and the three top-ranked firms were selected for interviews; and

WHEREAS, based on the interviews and the evaluation criteria set out in the RFP, the Evaluation Committee recommends the award of a Professional Services Agreement to Creative Civilization for an amount not to exceed $200,000.00; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Professional Services Agreement with Creative Civilization are authorized and approved. The City Manager, or her designee, is authorized to execute the Agreement, a copy of which, previously executed by Creative Civilization, is attached to this Ordinance as **Exhibit I.**

SECTION 2. Funding in the amount of $200,000.00 for this Ordinance is available in Fund 29006000, Cost Center 8003010001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Creative Civilization and shall 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 take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 18th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**41 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64A, 64B, 65A, 65B, 66A, 66B, 66C, 67A, 67B, 67C, 68A, 68B, 68C, 69A, 69B, 69C, 69D, 70A, 70B, 70C, 70D, 70E)**
Date:	06/18/2015
Time:	10:00:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a professional services agreement for the development of a La Villita Advertising and Marketing Plan with Creative Civilization for a total amount not to exceed $200,000.00. [Ed Belmares, Assistant City Manager; Felix N. Padron, Director, Culture and Creative Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit I

PROFESSIONAL SERVICES AGREEMENT
FOR
ADVERTISING AND MARKETING SERVICES FOR LA VILLITA

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 Assistant City Manager and Creative Civilization by and through Gisela Girard, its President/Chief Operating Officer, ("Consultant"), both of which may be referred to herein collectively as the "Parties".

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

I. DEFINITIONS

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

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

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

"Director" shall mean the director of City's Department for Culture and Creative Development.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon final execution and terminate June 20, 2016 or upon completion.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in its proposal, attached and incorporated into this Agreement as Exhibit I, in exchange for the compensation described in Article IV. Compensation.

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

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed two hundred thousand dollars ($200,000.00) as total compensation, to be paid to Consultant as follows:

4.1.1 City shall pay Consultant based on the following pricing schedule:

PROFESSIONAL STAFF SERVICE TYPE	HOURLY RATE
Adverting/Public Relations (Incl. Skywriting)	**$95.00**
Communications: Public Relations Consulting	**$95.00**
Advertising Consulting	**$95.00**
Advertising Agency Services	**$95.00**
Communications Marketing Services	**$95.00**
Marketing Consulting	**$95.00**
Marketing Services (Distribution, Research, Sales Promotion)	**$95.00**
Web Services	**$95.00**

All prices provided includes all cost associated with the performance of the services specified, including materials, supervision, labor, transportations, delivery and related cost. No other charges shall be applied.

Hourly Rate reflects a blending non-profit rate of $95.00 for all Agency departments including senior management.

4.1.2 Consultant shall invoice City for the payments due under Subsection 4.1.1 and City shall pay such invoices within 30 days of receipt, subject to the provisions of Sections 3.2 and 4.3.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

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

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

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

VII. TERMINATION

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

7.2.1 Termination Without Cause. This Agreement may be terminated by either party upon 15 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.2.2 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:

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

7.2.4 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 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this

Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.2.5 Bankruptcy or selling substantially all of company's assets

7.2.6 Failing to perform or failing to comply with any covenant herein required

7.2.7 Performing unsatisfactorily

7.3 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.

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

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

7.6 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.

7.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's

remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

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

If intended for City, to:	City of San Antonio Attn: Felix Padron Department for Culture and Creative Development 203 S. St. Mary's Street, Suite 360 San Antonio, Texas 78205
If intended for Consultant, to:	Creative Civilization Attn: Gisela Girard 106 Auditorium Circle, 2nd Floor San Antonio, TX 78205

IX. SBEDA

9.1 SBEDA Program

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 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 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.

9.2 Definitions

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

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

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a

Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Consultant to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by 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, 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 Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Emerging SBE (ESBE) – a certified SBE 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, that is no more than five years old at the time of its original certification as an ESBE or whose annual revenues and number of employees are no greater than 25% of the small business size standards for its Industry as established by the U.S. Small Business Administration, that is actively enrolled in the Mentor-Protégé Program for its Industry (once established by the City), and meets the Significant Business Presence requirements as defined herein.

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 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 Consultant's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of 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 $1/16^{th}$ percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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 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 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 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 City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

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

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

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or 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 Consultant and its subcontractors shall be submitted to City prior to execution of this Agreement and any Agreement modification.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in 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 Agreement which states Consultant's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this 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 Agreement, 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 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.

9.3 <u>SBEDA Program Compliance – General Provisions</u>

As Consultant acknowledges that the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in City's SBEDA Policy & Procedure Manual are in furtherance of City's efforts at economic inclusion and, moreover, that such terms are part of Consultant's scope of work as referenced in 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 Agreement by City. Without limitation, Consultant further agrees to the

following terms as part of its contract compliance responsibilities under the SBEDA Program:

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;

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;

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;

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 Consultnat of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated

Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

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

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.

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

8. Consultant acknowledges that City will not execute a contract or issue a Notice to Proceed for this project until 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 Agreement.

9.4 <u>SBEDA Program Compliance – Affirmative Procurement Initiatives</u>

City has applied the following contract-specific Affirmative Procurement Initiatives to this Agreement. 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:

ESBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (b), this Agreement is being awarded pursuant to the Emerging SBE (ESBE) Prime Contract Program, and as such, Consultant affirms that if it is presently certified as an ESBE, Consultant agrees not to subcontract more than 49% of the Agreement's value to a non-ESBE 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.

9.5 Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, 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, 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 Consultant retaliate against any person for reporting instances of such discrimination. Consultant 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 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 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.

9.6 Prompt Payment

Upon execution of this Agreement 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 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 Consultant until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of this Agreement.

9.7 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:

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

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

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

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

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

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

1. Suspension of this Agreement;

2. Withholding of funds;

3. Rescission of this Agreement 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 City for a period not to exceed two years (upon City Council approval).

X. INSURANCE

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

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and

prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

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

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Damage to property rented by you	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 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

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within

10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

Department for Culture and Creative Development
Attn: Felix Padron
203 S. St. Mary's Street, Suite 360
San Antonio, Texas 78205

10.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices;

- 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 and employers' liability policies will provide a waiver of subrogation in favor of the City.

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

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

10.7 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.

10.8 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.

10.9 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

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

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

XI. INDEMNIFICATION

11.1 **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 or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of 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 **The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or**

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

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

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.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to perform all the work under this Agreement or subcontract such work through Tribu. City approves of the use of this subcontractor. The use of any additional subcontractors shall require the prior approval of City.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the

responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by 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 City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

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

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent 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. CONFLICT OF INTEREST

14.1 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.

14.2 Pursuant to Section 14.1 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.

XV. AMENDMENTS

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

XVI. SEVERABILITY

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

invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVII. LICENSES/CERTIFICATIONS

17.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. COMPLIANCE

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

XIX. NONWAIVER OF PERFORMANCE

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

XX. LAW APPLICABLE

20.1 **THIS 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.**

20.2 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.

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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

XXIV. ENTIRE AGREEMENT

24.1 This Agreement, together with its exhibit, constitutes 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 XV. Amendments.

Signatures on following page

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

CIY OF SAN ANTONIO	**CREATIVE CIVILIZATION**
_____	Gisela Girard
Edward Belmares Assistant City Manager	Gisela Girard President/COO
_____	6/9/15
Date	Date

Approved as to Form:

_____

City Attorney

Exhibit I: Consultant's Proposal

IV. Proposed Plan

Prepare and submit the following items.

1. Describe the proposed plan and approach to conduct operations, including service categories, specific tasks, and staff assigned and/or sub consultants.

Creative Civilization is highly-skilled and experienced at transforming brands.
This assignment is about transforming La Villita into a relevant and contemporary gathering place for both visitors and local residents as a place to enjoy its new and expanded offerings including dining, arts, music and other activities.

This transformation will be fueled by the City's efforts in attracting new and expanded offerings. Creative Civilization will create and implement a complete rebranding of La Villita to include logo, graphics, signage, brochures, multi-media advertising, media planning and placement, and a robust public relations, social media and digital outreach strategy.

Furthermore, the Agency will develop a Strategic Plan and Calendar of Marketing Activities to include a high visibility launch strategy and impactful, sustaining marketing outreach. Key target audiences will include visitors and the local community, so that La Villita will become a high-profile, top of mind gathering place for dining, art, music and other activities.

The key to success will be to build on the unique characteristics and personality of the La Villita brand.

La Villita is San Antonio. San Antonio is La Villita.
What is new is old. What is old is new.

Through our synergistic efforts, our Project Team – comprised of Creative Civilization as marketing/branding Prime Contractor and Tribu as web/digital Sub-Contractor, will not only contemporize and refresh the La Villita brand but more importantly it will give it new meaning, excitement and energy in engaging all prospective visitors, whether from out of town or from within town.

The premise behind our proposal is that La Villita and San Antonio are synonymous on multiple levels: La Villita is San Antonio and San Antonio is La Villita. Exploring and experiencing La Villita is much like taking in the whole of San Antonio.

The DNA of our duality is welcoming, friendly, interesting and enriching. We are the kind of community that our residents are proud to call home, and where we enjoy being occasional tourists in our own backyard. And we are the kind of community that visitors from out of town are made to feel at home, and encouraged to participate in our collective experience time and time again.

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It is this spirit of connectivity that must be re-injected into La Villita. It is the cultural and nostalgic heart of our community, but also the expressive and progressive soul of our community. La Villita is San Antonio and San Antonio is La Villita.

The Creative Civilization Team will work collaboratively with the City and DCCD to craft the best possible expression of the La Villita brand and then communicate it effectively through the website in conjunction with all marketing outreach materials and collateral. We will connect with our various target audiences through well-crafted communications that persuade people to truly experience La Villita – the ambiance, the grounds, the diverse base of tenants, signature events and a variety of opportunities throughout the year in a way like never before. While many may perceive La Villita as a place to visit only once in a great while or only for special events like Fiesta, we fully intend to re-frame the relationship between the brand and our audiences into one in which they are always going to want to know what's now happening and what's happening next at La Villita.

At the end of the day, our desire is to position La Villita as a "365" brand, in other words, a brand that lives, breathes and has something exciting happening every day of the year. Through highly-purposeful marketing, intelligent online and web engagement and a laser-focused public relations and social media strategy, our Team will re-define and re-imagine La Villita for a new era. It will be a place bustling with activity, vitality and distinctive tenants. Visitors won't be able to get enough of La Villita. It will be a place where they simply won't want to miss a beat.

In addition to our core technical proposal, we have included various creative samples and case studies which exhibit the power of the Creative Civilization and Tribu collaboration. Because of our vast and deep experience in building many of San Antonio's iconic places, we believe we are the right fit for The City of San Antonio and the Department for Culture and Creative Development in this important endeavor to refine and reposition the La Villita Historic Arts Village brand. We stand ready to bring the best of our capabilities, experience, innovation and creativity to make that happen.

Creative Civilization is a full-service, independently-owned firm that will serve as the Prime Contractor in handling the scope of services as outlined on pages 4 and 5 of the RFP. The Agency will use as a subcontractor a key firm with relevant expertise. The Agency enjoys a strong working relationship with Tribu based on their proven performance, relevant experience and particular expertise.

The Agency will function as the Prime consultant leading all branding, marketing and messaging components of the contract and will work in a collaborative fashion with our proposed digital marketing/web design subcontractor, **Tribu** – as well as the DCCD and the

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City's ITSD web development group – to integrate the new branding approach into the look, tone and feel of the La Villita website landing page and through all navigation.

All project management, including day-to-day communications, billing/invoicing, meeting scheduling, and overall administration of the account will be handled through Creative Civilization as the lead contractor. It is our practice to establish a weekly Client Status Meeting in which we review the status, deliverables and timelines related to all current and upcoming projects.

2. Describe staffing and/or sub consultant plan to ensure adequate level of services can be maintained throughout term of the contract. Identify proposed tasks and schedule.

Creative Civilization is structured a full-service advertising, marketing and public relations firm capable of fulfilling all aspects of marketing plan development, creative ideation and tactical execution. Our digital/web partner, Tribu, will function as an extension of the Creative Civilization team to ensure that elements of the marketing plan which require web and digital integration are completely synergistic with the essence and spirit of the new La Villita brand.

Our Agency employs 30 full-time staff to provide full-service marketing, advertising and public relations services for our clients. The Tribu team includes specialists in web design, digital marketing outreach and hosting/management structure.

Below is an organizational chart that illustrates the working relationship among the various functional disciplines within Creative Civilization as well with Tribu. The overall digital team for the La Villita account will consist of the Agency's creative team and management leadership team in collaboration with designers, programmers and coders from Tribu.

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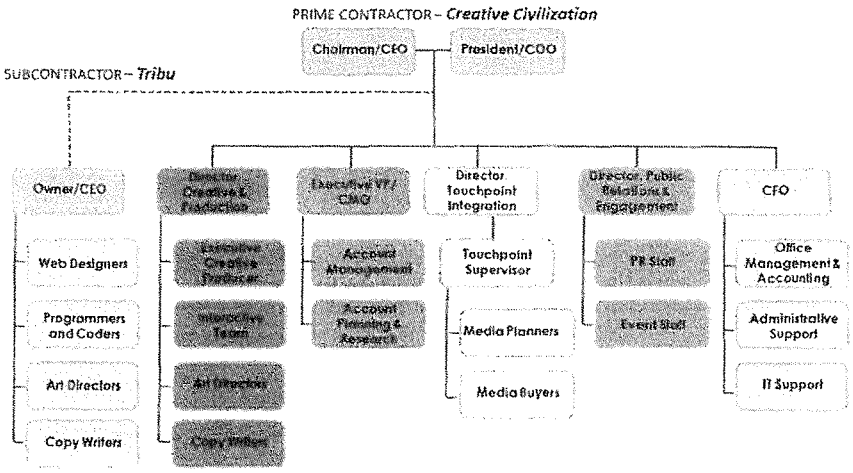
ORGANIZATIONAL CHART FOR LA VILLITA ACCOUNT



3. Describe how the developed plans would be implemented and utilized by the City's DCCD to bring awareness to La Villita and is offerings, including a timeline.

The Agency will work closely with the City's DCCD and web development teams to develop a fully-integrated marketing campaign that will not only re-define and contemporize the La Villita brand, but will also leverage opportunities to engage with visitors and locals alike to stimulate their interest in visiting La Villita and its tenants. Tribu has previous experience working with the City's web development teams which will make for a smooth process.

12-Month 4-Phase Plan

Our four-phase work plan includes a high level of partnership and collaboration with the City and the DCCD. Our phased approach demonstrates how we plan to accomplish these goals. Our approach begins with an initial phase of planning and preparation, continues with the re-launch and introduction, and includes a sustaining phase for the holiday and spring periods, and a reinvigoration phase, respectively.

Assuming an estimated May 1, 2014 contract start date, our proposed 4-phase approach for the 12-month term of the contract is illustrated below. In addition to identification of each of

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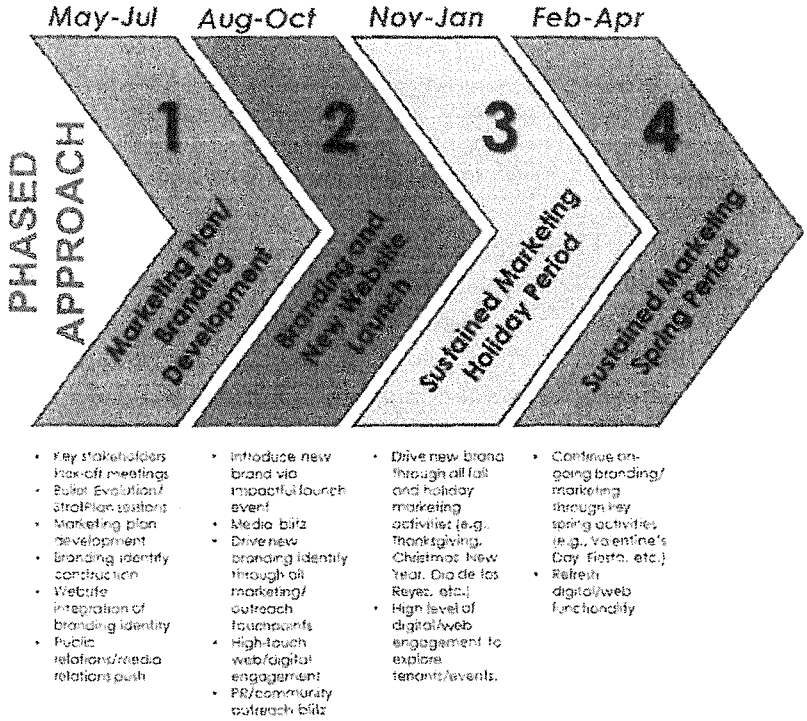
the four major phases spanning from May 2014 through April 2015, key activities are outlined below each phase.

PHASED MARKETING APPROACH



Creative Civilization offers the aforementioned phased approach as a 'broad plan' of activity, however, our team will remain flexible in working with the assigned project manager and key stakeholders to create the approach that works best for all interested parties.

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Overview of Phased Approach

Phase I – Marketing Plan and Branding Development (May – July 2015)

The first phase of the overall program is extremely important in that it sets the stage for how the new brand will be constructed and how subsequent phases will be developed and executed.

Early in Phase I, Creative Civilization leadership will work with key DCCD/City stakeholders to kick-off the project, to conduct proprietary strategic ideation sessions (Belief Evolution™ – which explores key target consumer current and future desired beliefs to be used in creative development; StratPlan™ – which brings all strategic leaders together to jointly set strategic goals for the branding and marketing components). After receiving these critical inputs, the

Agency team will develop a full-year marketing plan and initiate the ideation process for the brand identity portions.

Creative Civilization's digital team will work with Tribu to ensure that the La Villita website delivers all aspects of the new brand.

Phase I will be complemented with public relations strategies and tactics, and media relations outreach throughout the summer to secure strong brand awareness in the marketplace prior to the full launch in Phase II.

Phase II – Branding and New Website Launch (August – October 2015)

As new tenants begin to occupy the reimagined La Villita, the new brand will be visible, creating a renewed sense of purpose, interest and excitement for the historic grounds.

In late summer/early fall, the brand will inform and educate visitors and locals about how the "new" La Villita a strong reflection of San Antonio's rich culture, history, values and spirit. As mentioned in the introductory section of this proposal, our goal will be to illustrate how La Villita is synonymous with the best of San Antonio.

In essence, we will communicate that "***La Villita is San Antonio and San Antonio is La Villita***" to bring to life the rich heritage, culture and our city's welcoming nature.

Following the "soft-launch" the bulk of the fresh news about La Villita will be delivered in a highly-impactful launch event in August and the ensuing launch period weeks. Both will utilize a series of touchpoints to connect with prospective and actual visitors to San Antonio, as well as with all segments of the local and surrounding communities. A strong call to action to

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experience, celebrate, and share the new La Villita will be infused in all marketing communications, whether print, digital or collateral mediums.

A comprehensive earned media and social media campaign will utilize key messaging points for strategic local, regional and national media outreach during the Phase II rollout. The campaign will include traditional and outside-the-box strategies and tactics to maximize earned media opportunities, as well as drive event awareness, interest and support from target audiences.

Paid media tactics will round out touchpoint communication, cherry-picking those targeted environments that resonate and are relevant to La Villita's prospect while maximizing efficiencies and leveraging added value.

Phase III – Sustained Marketing – Holiday Period (November 2014 – January 2016)

Beyond the launch period in Phase II, it is imperative to establish an ongoing relationship between the brand and key audiences about the year-round slate of activities and "365" engagement at La Villita.

Phase III will focus on establishing diverse points of interest – compelling reasons to visit La Villita during the winter holiday months that span from Thanksgiving in November, Christmas/Hanukah/Kwanza in December, and the New Year and Dia de los Reyes in January.

While print media will be focused on driving awareness and stimulating foot traffic to specific events, retailers and artisans, digital and social media messaging will be designed to keep potential visitors informed about activities at La Villita 365 days a year as well as driving interest and stimulating visitation.

The ongoing public relations campaign will complement the overall brand strategy, providing continuous effort to generate interest and opportunities to tell the La Villita story—its history, evolution and enduring relevance in San Antonio and Texas.

Similarly, paid media support will continue supporting marketing efforts using key tourism and arts & culture vehicles leveraging publisher's print and digital platforms. Our savvy negotiations will secure prime positioning with editorial adjacencies and bonus listings as well as leverage our partners' database reach through e-newsletters, e-blasts and social media outreach.

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Phase IV – Sustained Marketing – Spring Period (February – April 2016)

The Spring sustained marketing period is very similar to the holiday-focused period in that we will continue to build the relationship between La Villita and target audiences.

A key difference is that this period ends with an already-heavy visitation for the series of events related to Fiesta in April. Nevertheless, our messaging will be focused on the renewal of the year with late winter/spring paralleling a reinvigorated La Villita.

While print media support can help drive visitation to tenants around key dates such as Valentine's Day and St. Patrick's Day, digital and social media messaging will continue to keep La Villita fans apprised of the latest happenings and news related to La Villita, serving to drive year-round attraction.

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