LB
01/28/16
Item No. 20

AN ORDINANCE 2016-01-28-0032

AUTHORIZING A THREE-YEAR PROFESSIONAL SERVICE AGREEMENT WITH PULSE TRAVEL MARKETING, LTD FOR FOREIGN REPRESENTATIVE SERVICES ASSISTING THE SAN ANTONIO CONVENTION & VISITORS BUREAU (CVB) IN ITS MARKETING AND TOURISM EFFORTS IN CANADA, IN AN AMOUNT NOT TO EXCEED $100,000.00 PER YEAR, WITH AN OPTION TO RENEW FOR ONE ADDITIONAL TWO-YEAR TERM.

* * * * *

WHEREAS, one of the important tasks for destination management and marketing organizations is to identify potential markets for growth and the Convention and Visitors Bureau vision is to position San Antonio as Canada's preferred global destination for tourism; and

WHEREAS, a Request for Proposals for Foreign Representative Services in Canada was released on August 14, 2015 and a five -member Evaluation Committee reviewed the four proposals that were submitted and selected two firms for interviews; and

WHEREAS, the Committee is recommending that the contract be awarded to Pulse Travel marketing, LTD ("Pulse"); **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a three-year Professional Services Agreement with Pulse Travel Marketing, LTD, in an amount not to exceed $100,000.00 per year, with an optional two-year renewal term, in an annual amount not to exceed $110,000.00, are authorized and approved. The City Manager, or her designee, is authorized to execute the Agreement, a copy of which, previously executed by Pulse, is attached to this Ordinance as Exhibit I.

SECTION 2. Funding in the amount of $100,000.00 for this Ordinance is available in Fund 29006000, Cost Center 4305020001 and General Ledger 5201040 as part of the Fiscal Year 2016 Budget.

SECTION 3. Additional funding for this ordinance is contingent upon City Council approval of the Fiscal Year 2017 and subsequent budgets for the duration of this Agreement.

SECTION 4. Payment not to exceed the budgeted amount is authorized to Pulse Travel Marketing, LTD and shall be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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SECTION 6. 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 28th day of January, 2016.

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:	**20 (in consent vote: 4, 5, 7A, 7B, 9, 10A, 10B, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30)**
Date:	01/28/2016
Time:	09:20:26 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a three-year Professional Service Agreement with Pulse Travel Markeing, LTD, for foreign representative services to assist the San Antonio Convention & Visitors Bureau in its marketing and tourism efforts in Canada, in an amount not to exceed $100,000.00 per year, with an option to renew for one additional two-year term. [Lori Houston, Assistant City Manager; Casandra Matej, Director, Convention & Visitors Bureau]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				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					
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

EXHIBIT 1

PROFESSIONAL SERVICES AGREEMENT
FOR FOREIGN REPRESENTATIVE SERVICES IN CANADA

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. 2016-__-__-____, passed and approved on the __ day of _____, 2016 and Pulse Travel Marketing, LTD ("Contractor"), by and through its duly authorized representative, 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.

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

"Director" shall mean the director of City's Convention and Visitor's Bureau ("SACVB").

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall be for a three-year term commencing on February 01, 2016 and terminating on January 31, 2019 ("Initial Term").

2.2 There shall be one available two-year renewal term and compensation for the renewal term shall be agreed to by the Parties. The Parties may renew this Agreement in writing for one two-year renewal term ("Renewal Term") and such renewal shall not require City Council approval.

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

III. SCOPE OF SERVICES

3.1 In order to increase the number of visitors to San Antonio from Canada, Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Specifically, Contractor shall perform, but not be limited to, the following services:

3.1.1 <u>Operational Services</u>

a. Provide communication needs/services to include: a dedicated San Antonio telephone line, long distance, fax, e-mail and photocopying, etc. All must be dedicated to San Antonio;

b. Provide storage for SACVB collateral materials;

c. Submit monthly activity reports that include travel industry initiatives, trends, activities, results, and developments along with supporting back up; and

d. Secure courier and postal services for shipping and transporting of SACVB's communications/promotional materials.

3.1.2 <u>Sales Calls/Client Training</u> Contractor's staff shall conduct 2 - 3 personal sales calls and/or client training sessions per month to travel industry account representatives on behalf SACVB. Additionally, Contractor's staff will make additional sales calls during sales trips and/or in conjunction with trade fairs/shows. Contractor's staff shall also make telemarketing calls to travel professional contacts on a regular basis. The purpose of the calls is to maintain relationships and/or contact with the travel trade industry and to continue in promoting assets, building awareness, and maintaining a positive image of San Antonio's travel and related products, services and activities that are associated with the San Antonio tourism industry.

3.1.3 <u>Strategic Direction</u> Contractor shall participate in Strategic Direction meetings in San Antonio in development of the Marketing/Advertising/Media plans for Canada. Contractor shall provide on an on-going support by sharing their market expertise to help inform marketing plans as needed. Contractor must attend two meetings in San Antonio per year.

3.1.4 <u>Communications Objectives</u> Contractor shall work to increase awareness and focus communications on stimulating more Canadian travelers to select San Antonio as their No. 1 choice for a vacation destination to visit, and increasing activity levels of the leisure visitor while in San Antonio. This message will be aimed at different niche markets – group/incentive, travel trade, consumers – through tried-and-perfected public relations tools.

a. Contractor shall obtain at a minimum of $350,000.00 in media value on an annual basis through proactively pitching San Antonio-related

tourism stories to high-level media and from FAM trip visitation. Contractor shall work closely with SACVB to target key media as well as pitch a variety of stories about the destination, including San Antonio's culinary, art, history and off-the-beaten path angles. If this Agreement is renewed, the annual media value goal of $350,000.00 will be extended for the renewal period.

All articles and media coverage captured from Canada by SACVB's media monitoring company will be included in the annual media value goal.

3.1.5 **Marketing & Promotion** Contractor shall review and critique a variety of tourism marketing/publicity products and projects and collaborate with SACVB to develop ways to improve San Antonio's consumer and trade product content and appearance in brochures, web pages, emails, and advertisements in order to maximize and/or improve the effectiveness.

3.1.6 **Consumer Initiatives** Contractor will provide SACVB with consumer promotion opportunities for consideration. Contractor will organize and implement *a minimum of* two consumer marketing promotions for SACVB per year. Contractor shall ensure that promotions are logistically and effectively planned, executed and completed.

a. Potential consumer partners target clients to include the following, but not limited to:
   i. Banking and credit card companies;
   ii. Travel Trade such as airlines, tour operators;
   iii. Media;
   iv. Retail partnerships (work with large head office consortia and chains to promote San Antonio to their offices in order to be up to date on current offers and activities. This could include sponsorship at conferences, special events, agent training and incentives and tactical campaigns); and
   v. identify any other potential opportunities;
b. Determine logistics regarding the selection;
c. Negotiate with airlines to potentially provide sponsorship support and/or to provide complimentary or low cost airfares;
d. Compose timelines on promotion;
e. Make necessary provisions to plan and execute promotion, including:
   i. Preliminary timeline;
   ii. Any necessary assets – deliverables needed, including obtaining from within Canada; and
   iii. monitor programs and execution and secure all agreed upon needs are met from both sides;
f. Provide SACVB with follow-up information and/or note the outcome/results of each promotion;

g. Provide a timely follow up summary report on outcome results relative to the attainment of the goals and/or objectives; and
h. Direct costs associated with promotions will be paid by SACVB.

3.1.7 <u>Travel Shows</u> Contractor shall represent SACVB by actively participating with visibility in three mutually agreed upon consumer and travel trade shows (that are cost-effective), as an exhibitor to maximize San Antonio's presence and exposure in the marketplace. The intent is to target a large number of specific travel trade and consumer groups to build awareness of San Antonio's travel products. Contractor shall:

a. Carefully review and analyze all consumer travel and consumer trade show opportunities, and make recommendations to CVB regarding which of the trade shows will serve to be more beneficial. The Contractor and CVB together will determine which of the shows San Antonio will have a presence; and
b. Maintain visible presence on-site throughout each of the shows, to represent SACVB's interest to all attendees, and provide assistance to any San Antonio delegates and/or industry partners that are attending any shows. Contractor shall attend all networking functions and provide SACVB with a recap in monthly reports noting activities, accompanied by a list of contacts made, a synopsis of the attendees met and a recommendation on SACVB's future participation.

3.1.8 <u>Familiarization ("FAM") Trips</u>

a. Media/Press Trips Contractor shall coordinate aspects of a minimum two to three individual and/or group media trips to San Antonio, as directed by CVB, including identifying potential participants, and verifying their influence on travel. Contractor will relay participant information to CVB and partners, and shall assist in securing airfare, if possible, and conduct follow up surveys. Additionally, Contractor shall negotiate with airlines to provide sponsorship support and/or to provide complimentary or low cost airfares and qualify press invited to participate in media tours by reviewing credentials and/or other appropriate documentation for validation, such as a letter of assignment from the publisher or broadcast medium that has commissioned their work, and copies of recently published articles and/or broadcast work.

b. Travel Trade Familiarization/Educational Trips and Site Inspections Contractor will conduct two travel trade familiarization trips or site inspections trips per fiscal year, coordinate aspects of individual and/or group Travel Trade trips to San Antonio, as directed by SACVB including identifying potential participants, verifying their influence on travel, and shall relay participant information to SACVB and partners, and shall assist in securing airfare, if possible, and conducting follow up surveys. Additionally, Contractor shall negotiate

with airlines to potentially provide sponsorship support and/or to provide complimentary or low cost airfares.

3.1.9 Tour Operator/Travel Industry Support Contractor shall identify and provide support to tour operators/wholesalers that feature San Antonio, and shall encourage those who do not feature San Antonio to do so. Contractor will review tour operators' San Antonio product offerings and identify opportunities for cooperative advertising and other effective advertising and/or publicity outlets to assist SACVB in increasing product sales, in pursuit of economic development opportunities. Trade outreach to include relevant sales calls, e-blasts and webinars.

a. **Sales Missions with State of Texas**
   i. Coordinate with the CVB in the representation of San Antonio in the annual Canadian Texas Sales Mission;
   ii. Coordinate with the CVB on any other State of Texas opportunities as they are presented; and
   iii. To keep San Antonio top of mind with trade and media across Canada.
   iv. This activity provides an ideal format for networking and updating the media and trade on new developments, story ideas and vacation options in the second most populous city in Texas. It also gives partners the opportunity to meet the key players in the Canadian travel industry.

b. **Sales Call Trip(s) in Canada**
   i. Coordinate 1- 2 individual sales call trip(s) during fiscal year for CVB to Canada;
   ii. Coordinate all aspects of trip(s), to include making recommendations, qualify target list, and scheduling appointments;
   iii. Prepare itineraries; and
   iv. Confirm hotel arrangements, meal function venues, ground transportation and all logistics.

c. **FIT Tour Operators and OTA'S** Identify opportunities with FIT Operators and OTA's for SACVB. Contractor shall provide recommendation on top travel trade accounts upon which City should focus efforts. From this list, the Parties will develop a mutually agreed upon list as a target list for potential sales calls and promotional opportunities.

3.1.10 Airline Opportunities Contractor shall assist in developing and or maintaining relationships with key airline executives as agreed upon with the San Antonio CVB. Contractor shall assist in identifying the potential for adding new direct flights and or marketing opportunities. These efforts will be aligned with the City of San Antonio Airport initiatives.

3.1.11 Product Analysis Contractor shall conduct research to include an annual review of all tour operator and other trade programs presently promoting San Antonio. This research would be information directly derived from the tour operators and airlines (if possible) that presently sell San Antonio. This report shall include tour operator company name, key contact, address, phone, e-mail, website, city package, group tours, hotels used, attractions and/or other products offered. This report will cover annual product offerings and will be due by November 1. City will review reports from the previous year (October 1 – September 30th).

3.1.12 Media and Industry Relations

a. **Media Calls** Contractor shall conduct a minimum of three deskside or phone meetings with journalists a month to provide information about San Antonio and determine any editorial needs, and whenever necessary and appropriate, refer them to SACVB for further assistance.

b. **Media Releases** Contractor shall distribute news and features to travel trade and consumer media in the Contractor's media database. Contractor shall follow up with media to generate editorial coverage and provide copies of resulting coverage to SACVB. Contractor shall initiate special features on San Antonio in travel publications and assist in responding to individual requests from journalists.

c. **Photo and Video Library** Contractor shall utilize SACVB's photo and video library (http://media.visitsanantonio.com) to provide images and b-roll to media and travel professionals.

3.1.13 Reporting

a. **Monthly Reports** Contractor will submit a monthly report to SACVB, which shall provide complete details listing all services performed, and the outcome of activities, by the 15th of each month, including media and publicity back up. This report shall be e-mailed and received by the 15th of each month. Reports should include the following based on activities included:
   i. Number of travel trade sales calls and/or in-agency seminars made in person including name, company name, address, phone, email, and notes regarding call;
   ii. Number of media pitches made including name, publication name, address, phone, email, circulation, etc.;
   iii. Number of telemarketing/prospecting calls to potential clients including name, company name, address, phone, and email;
   iv. Number of inquiries, trade, media and consumer, fulfilled;
   v. List of notable initiatives;

vi. Provide details regarding media stories generated, and include name of the publication, circulation, etc.;
vii. Provide details regarding co-op marketing or partnership efforts as necessary;
viii. Provide copies of consumer advertisements regarding San Antonio;
ix. Information regarding the representation of SACVB's interest at trade and consumer trade shows;
x. Information regarding familiarization trips (FAMS) hosted, if any; and
xi. Provide list of other relevant tourism events, meetings and/or conferences attended or organized for the purpose of promoting tourism to San Antonio.

b. Contract Summary Report At the end of each year, Contractor shall provide a comprehensive report to SACVB which shall include a statement regarding the attainment of goals and objectives, a summary of the outcome, list any notable events or activities, or changes, and provide recommendations for continued sales and marketing efforts, as well as feedback regarding the potential for added initiatives in the regions. The due date of this report may fluctuate from year to year based on the reporting needs of SACVB.

3.2 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, 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 Contractor'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 CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, for the Initial Term, City agrees to pay Contractor an annual amount not to exceed $100,000 as total compensation, of which $30,000 is allocated for promotional and miscellaneous operational expenses. The annual amount for the Renewal Term, if utilized, shall be $110,000, of which $33,000 will be allocated for promotional and miscellaneous operational expenses. The annual amounts shall be paid as follows:

4.1.1 Contractor shall invoice City on a monthly basis and provide any and all backup documents requested by City. City shall pay such invoices within 30 days of the receipt of such invoices, subject to the provisions of Sections 3.2 and 4.2.

4.2 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Final payment will be made to Contractor 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 Contractor, 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 Contractor 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 Contractor.

5.2 Contractor 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 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the 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 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the 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, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

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

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by either party upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

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

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

7.4 Defaults With Opportunity for Cure. Should Contractor 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. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor 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 contractor 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 contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
7.4.2 Bankruptcy or selling substantially all of company's assets;
7.4.3 Failing to perform or failing to comply with any covenant herein required; or
7.4.4 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, Contractor 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 Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor 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 Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor 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 Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor 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, Contractor shall cease all operations of work being performed by Contractor 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 Contractor 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
Attn: Casandra Matej, Director
Convention and Visitor's Bureau
203 South St. Mary's Street
San Antonio, Texas 78205

If intended for Contractor, to: Pulse Travel Marketing Limited

Attn: Patrice Bell & Sana Keller, Managing Partners
5160 Explorer Drive, Unit 32
Mississauga, Ontario, L4W4T7

IX. INTELLECTUAL PROPERTY

9.1 All Intellectual Property that is created, conceived, reduced to practice or made by Contractor during the regular course of or arising out of this Agreement, whether alone or in conjunction with others, subject to any third party licensed rights, (the "Work") shall be and will remain the sole and exclusive proprietary property of City. The Work shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Work and all rights therein, including all rights under the Visual Artists' Rights Act of 1990, shall be solely vested in City. Contractor further agrees to develop and execute any documents, give all oaths or testimony, and otherwise give all assistance deemed by City to be necessary or desirable to secure, maintain, or defend City's ownership of the Work.

9.2 Contractor is required to set out in its contracts with other agencies and any other party who is not employed by Contractor ("Third Party") that all intellectual property created, conceived, reduced to practice or made by Third Party, pursuant to such contract (the "Third Party Work"), shall be and will remain the sole and exclusive proprietary property of City. Further, the contract shall inform Third Party that the Third Party Work shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Work and all rights therein, including all rights under the Visual Artists' Rights Act of 1990, shall be solely vested in City. Contractor is further required to give all assistance deemed by City to be necessary or desirable to secure, maintain, or defend City's ownership of the Third Party Work.

9.3 Contractor shall pay all royalties and licensing fees for the use of third party intellectual property. **CONTRACTOR INDEMNIFIES and HOLDS CITY HARMLESS from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials, methods or other intellectual property used under this Agreement. CONTRACTOR shall DEFEND CITY against all suits for infringement of any Intellectual Property rights.** Further, if Contractor has reason to believe that the design, service, process or product specified is an infringement of the intellectual property rights of a third party, it shall immediately (within 24 hours) give such information to City.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed certificate(s) of insurance to the City's Convention and Visitors Bureau Department, which shall be clearly labeled "***Foreign Representative Services in Canada***" in the description of operations block of the certificate. The certificate(s) shall be completed by an agent and

signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a memorandum of insurance or binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this agreement until such certificate and endorsements have been received and approved by City's Convention and Visitors Bureau Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

10.3 A contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, 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. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	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
2. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$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 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names Contractor and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this 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 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Convention and Visitors Bureau Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name 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 City, with the exception of the workers' compensation and professional liability policies;

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

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

10.7 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement certificate of insurance and applicable

endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

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

10.11 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 City shall be limited to insurance coverage provided.

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

XI. INDEMNIFICATION

11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of 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 CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED

COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The provisions of this INDEMNIFICAITON 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.

11.3 Contractor shall advise City in writing within 24 hours of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this Agreement.

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

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

XII. ASSIGNMENT AND SUBCONTRACTING

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

12.2 All work to be subcontracted under this Agreement shall be approved by City of San Antonio City Council, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor. Notwithstanding the foregoing, changes may be made to Contractor's SBEDA Plan with the written approval of Director and City's SBEDA Program Manager, without requiring additional approval of the City

Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

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

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

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

XIII. INDEPENDENT CONTRACTOR

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

XIV. CONFLICT OF INTEREST

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

14.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that 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 Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance, when necessary.

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

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

XVIII. COMPLIANCE

18.1 Contractor shall provide and perform all services required under this 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.

20.3 Non-Discrimination As a party to this Agreement, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

22.1 This 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 authorizing ordinance, 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.

EXECUTED and **AGREED** to be effective February 01, 2016.

City of San Antonio

_____
Sheryl Sculley
City Manager

CONTRACTOR

Patrice Bell
Managing Partner

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney