

AN ORDINANCE 2018-11-15-0915

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HOST COMPLIANCE LLC TO PROVIDE SHORT TERM RENTAL REGISTRATION, PERMITTING, COMPLIANCE AND COLLECTION SERVICES FOR A ONE (1) YEAR TERM COMMENCING NOT LATER THAN JANUARY 15, 2019, WITH TWO (2) RENEWAL TERMS OF ONE (1) YEAR EACH AT THE CITY'S OPTION.

* * * * *

WHEREAS, on November 1, 2018, the City Council approved Ordinance No. 2018-11-01-0858 (“Ordinance”), which provides for the regulation of Short Term Rental (“STR”) properties in the City, thereby completing a legislative process of approximately two years; and

WHEREAS, with the approval of the Ordinance, it is projected that there will be a significant increase in STR activity in the City, which will require STR registration, permitting, HOT collection, and compliance activities by the City; and

WHEREAS, in anticipation of these increased activities, on December 13, 2017, the City issued a Short Term Rental Monitoring and Compliance Services Request for Proposal (“RFP”); and

WHEREAS, on January 19, 2018, the City received three (3) Proposals in response to the RFP; and

WHEREAS, all three Proposals were evaluated by the City Staff, and following this evaluation, City Staff has recommended that Host Compliance LLC be selected to provide professional services to facilitate the administration of STR registration, permitting, compliance, and collection; **NOW THEREFORE:**

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

SECTION 1. The Proposal submitted by Host Compliance LLC (“Host Compliance”) to provide the City with STR registration, permitting, compliance, and collection services for a one (1) year term commencing not later than January 15, 2019, with two (2) renewal terms of one (1) year each on the same terms and conditions at the City’s option, is hereby accepted.

SECTION 2. The Deputy Chief Financial Officer or his designee is hereby authorized to complete negotiations on and execute a *Professional Services Agreement For Short Term Rental Registration, Permitting, Collection And Compliance Services* (“Agreement”) with Host Compliance LLC that is substantially in accordance with the terms and conditions set forth in **Exhibit 1**. The City and Host Compliance LLC shall have sixty (60) business days after the effective date of this Ordinance to complete negotiation of the final terms of the Agreement and execute the Agreement. The final terms of the Agreement shall be substantially in accordance with those set forth in **Exhibit 1**, with such revisions as are approved by the City Attorney or his designee. If the Agreement has not been fully negotiated and executed by the time set out above, the Agreement must be brought back to City Council for further approval.

SECTION 3. Funding for this ordinance in the amount up to \$257,000.00 is available as part of the FY2019 Budget, see the table below:


| Amount | General Ledger | Fund | Cost Center |
|-----------------------------|----------------|----------|-------------|
| \$100,000.00 | 5201040 | 29006000 | 8002120002 |
| \$157,000.00 | 5407030 | TBD | TBD |
| Total amt. \$ 257,000.00 | | | |

SECTION 4. If approved by City Council, payment not to exceed the budgeted amount is authorized to Host Compliance LLC and should be encumbered with a purchase order. All expenditures will be in accordance with the Fiscal Year 2019 and subsequent budgets that fall within the term period of this contract approved by City Council.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer 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.

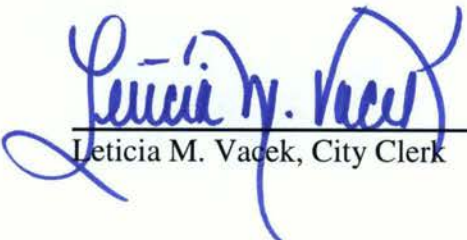
SECTION 5. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage hereof.

PASSED AND APPROVED this 15th day of November, 2018.



M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk



Andrew Segovia, City Attorney

CITY COUNCIL MEETING

**CONSENT AGENDA: ITEMS 5, 6, 7, 9, 10A, 10B, 11, 12, 13, 15,
16, 18, 19, 22, AND 23**

DATE: November 15, 2018

TO APPROVE

| NAME | ROLL CALL | MOTION | SECOND | ABSTAIN | AYE | NAY | ABSENT |
|-----------------------------------|-----------|--------|--------|---------|-----|-----|--------|
| Roberto C. Treviño DISTRICT 1 | | | | | ✓ | | |
| William "Cruz" Shaw DISTRICT 2 | | | | | | | X |
| Rebecca J. Viagran DISTRICT 3 | | ✓ | | | ✓ | | |
| Rey Saldaña DISTRICT 4 | | | | | ✓ | | |
| Shirley Gonzales DISTRICT 5 | | | | | ✓ | | |
| Greg Brockhouse DISTRICT 6 | | | | | ✓ | | |
| Ana E. Sandoval DISTRICT 7 | | | | | ✓ | | |
| Manny Peláez DISTRICT 8 | | | | | ✓ | | |
| John Courage DISTRICT 9 | | | ✓ | | ✓ | | |
| Clayton H. Perry DISTRICT 10 | | | | | ✓ | | |
| Ron Nirenberg MAYOR | | | | | ✓ | | |

COMMENTS:

RKN
11/15/18
Item No. 18

E X H I B I T I

NOVEMBER 15, 2018 AGENDA
ITEM NO. 18
ATTACHMENT I TO ORDINANCE
PSA WITH HOST COMPLIANCE LLC

**PROFESSIONAL SERVICES AGREEMENT
FOR
SHORT TERM RENTAL PERMITTING, COLLECTIONS,
AND COMPLIANCE SERVICES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This *Professional Services Agreement For Short Term Rental Permitting, Collections and Compliance Services* (“Agreement”) is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Home-Rule Municipal Corporation (“City”) acting by and through its Deputy Chief Financial Officer pursuant to Ordinance No. 2018-11-15-____ passed and approved on the 15th day of November, 2018 and **HOST COMPLIANCE LLC**, a _____ limited liability company by and through its Chief Executive Officer (“Consultant”). City and Consultant may be referred to herein individually as “Party” and 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 Deputy Chief Financial Officer, the director of City’s Finance Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall commence (the “Commencement Date”) on the first to occur of (a) the execution of this Agreement by the last of the Parties to do so as noted in the signature blocks of this Agreement, or (b) January 15, 2019, and shall end one (1) year after the Commencement Date.

2.2 City shall have the right to extend the Agreement under the same terms and conditions for two (2) one (1) year terms pursuant to a written agreement signed by the Parties. The consent of City's City Council for either of such extensions shall not be required.

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

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

3.1 Basic/Core Services

3.1.1 Short Term Rental ("STR") Discovery and Address Identification

3.1.1.a Identify all STR properties operating in the City of San Antonio and/or Bexar County.

3.1.1.b Provide detailed lists to the City of these accounts, to include identifying information and owner contact data. The information requested includes but is not limited to:

1. Owner Name and Contact Information
2. Bexar Appraisal District Parcel Number
3. Address of Property
4. Listing Platform and ID
5. Booking Frequency
6. Price of Nightly Rental
7. Location within the boundaries of the City of San Antonio and/or Bexar County.

3.1.1.c Perform data-informed outreach to STR operators regarding their tax remittance obligations.

3.1.1.d Provide updated lists of STR owners in non-compliance.

3.1.1.e Determine estimated revenues for each STR.

3.1.1.f Provide periodic reports and analysis to the City to support Hotel Occupancy Tax ("HOT") audits and other enforcement investigations.

3.1.1.g Provide a description of resources available to address issues of incomplete or incorrect data.

3.1.1.h Develop and implement mobile and web enabled forms and processes for payment of HOT and capturing of signatures, payments and required documentation.

3.1.1.i Initiate and diligently pursue and complete without interruption or delay all actions necessary to (x) integrate Consultant's online/mobile application with the City's SAP system and (y) integrate Consultant's merchant banking processing activities, capabilities and certifications with Chase Paymentech within the time and in the manner required by Chase Paymentech.

3.1.1.j Provide technical support for all of the services above.

3.1.2 STR Permitting

3.1.2.a Develop and implement mobile and web enabled forms and processes for streamlining Code Compliance permitting and capturing of signatures, payments and required documentation.

3.1.3 Compliance Monitoring

3.1.3.a Ongoing monitoring of STRs for compliance including updated lists of owners in non-compliance, estimated revenues for each STR, and periodic reports and analysis to support HOT audits and other enforcement investigations.

3.1.4 Daily Remittance of Permit Fee Proceeds and HOT Collections

3.1.4 a Consultant shall remit to City on the next succeeding business day all permit fee proceeds and HOT collections received by Consultant on the immediately preceding business day. Each daily remittance to City shall be in accordance with written payment instructions provided by City

3.2 Contingent Additional Services

3.2.1 In addition to the Basic/Core Services set out above, City may request Consultant to provide some or all of the additional services set out below ("Contingent Additional Services"). If requested by City, and Consultant agrees, Consultant shall provide said service(s) under the same terms and conditions of this Agreement, save and except those provisions specifically revised by the Director in the forwarded request (Section 3.2.2 below), revisions to terms and conditions mutually agreed to by the parties, and additional terms and conditions as set forth in the applicable Engagement Letter governing the provision of such service(s).

3.2.2 City will initiate such a request for Contingent Additional Services by forwarding a written request, executed by the Director or his designee, to

Consultant at its address provided herein. Within said request, the Director or his designee shall state the scope of services to be provided; the period of time within which said services are to be completed; and the consideration to be paid by City for the services provided, in accordance with subsection 7.5.

3.2.3 The Contingent Additional Services and the annual compensation to be paid by City to Consultant for those services are as follows:

3.2.3.a Public Outreach Communication With Property Owners. Compensation: \$43,935.

3.2.3.b Additional Hotel Online Payment and Reporting Services. Compensation: An amount not to exceed \$15,000, with the specific amount to be determined by the Parties if this service is requested by City.

3.2.3.c Dedicated Hotline – 24/7 staffed telephone hotline for neighbors to report non-emergency STR problems. Compensation: \$32,400.

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 of the Basic/Core services and activities set forth in ARTICLE III. Scope of Services above, City agrees to pay Consultant an amount not to exceed \$166,060.00 as total compensation, to be paid to Consultant in equal monthly amounts.

The compensation amount set out above for the Basic/Core services are based upon Consultant's estimate of a total of 3,600 STR properties in San Antonio and Bexar County. If the total number of STR properties in San Antonio and Bexar County that are identified and included in Consultant's inventory reported to City for the month ending December 31, 2019 is less than 3,600, the Amount of Payment for the last month will be reduced to an amount to be agreed upon in writing by the Parties not later than the date on which the last payment to Consultant is due pursuant to Section 4.3 below; however, in no case will compensation exceed \$166,060.

4.2 City currently contracts with Bexar County for City to collect the County HOT and to provide compliance and collection services. In the event that Bexar County does not agree to participate in the services provided for in this Agreement, the compensation paid to Consultant

may be reduced proportionally based on the number of STRs that are within the limits of Bexar County but not within the City limits.

4.3 Consultant will submit an invoice in a form acceptable to City not later than the 10th day of the month immediately following the end of each month in the amount of the compensation payable for that month as stated above. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Finance Department, P.O. Box 839966, San Antonio, Texas 78283-3966. City will issue payment of the compensation for core/basic services to Consultant within thirty days after receipt of an acceptable invoice and approval by Director.

4.4 Compensation for Contingent Additional Services requested by City and provided by Consultant will be invoiced in the full amount of the stated cost at the end of the month in which the services are completed and accepted by the Director. City will issue payment of the compensation for Contingent Additional Services within thirty days after receipt of an acceptable invoice.

4.5 Other than as stated above, 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 Sections 4.1 and Contingent Additional Services in 3.2. Total payments to Consultant cannot exceed the amounts set forth in Sections 4.1 and 3.2 above, without prior approval and agreement of the Parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance.

4.6 In the event of renewal of the Agreement for one or both of its renewal terms, the compensation for Core/Basic Services and Contingent Additional Services will be set by the Parties in the document evidencing the renewal and is subject to appropriation of such amounts in City's annual budget for the Fiscal Year(s) included in the respective renewal.

4.7 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 AND CONFIDENTIAL INFORMATION

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 Intellectual Property Rights – Ownership by Consultant. Consultant shall be the sole and exclusive owner of all software used or to be used in connection with this Agreement (“Software”), subject only to the ownership rights of Consultant’s third party licensors and of all copyright in the Software. Ownership of the intellectual property rights in the Software will inure to the benefit of Consultant from the date of creation or of fixation in a tangible medium of expression, as applicable, of such Software.

5.3 Property of City. Nothing herein shall be construed to grant any right or license to Consultant in or to any material provided to Consultant hereunder by City or residents of City, including, but not limited to any data, financial information, user data, resident data or information and, other than the right to use such material solely on behalf of City in accordance with the terms hereof. All of the foregoing materials, including, but not limited to, any and all copyrights, trademarks, service marks, and trade names related thereto, are and shall remain the property of City. City shall own all right, title and interest in and to City’s data, as well as any data that is derived from City’s data and provided to City as part of this Agreement.

5.4 Consultant represents that it has valid rights for the sale, resale, licensing, use and distribution of all software and third party software proposed and/or used in connection with this Agreement.

5.4 Consultant agrees that City may use the Software in executing City business processes. This right includes, but is not limited to, use by third parties necessary to complete City’s business. Third parties may include residents, citizens, customers, auditors, consultants and City organization units, including, but not limited to, agencies, boards and commissions, and quasi City entities.

5.5 Confidentiality. Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Consultant includes non-public information regarding features, functionality and performance of the Software. Proprietary Information of Consultant does not include the features and functionality of the Software that has heretofore been publicly released, nor does it include pricing information. Proprietary Information of City includes nonpublic data provided by City or its residents to Consultant to enable the provision of the services under this Agreement (“City Data”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Proprietary Information does not include any information that the

Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law.

VI. RECORDS RETENTION

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

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

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

VII. TERMINATION

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

7.2 Termination For Convenience. This Agreement may be terminated by City in whole or in part 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;

7.3.2 Any material breach of the terms of this Agreement, as determined solely by City, including but not limited to a failure to initiate and diligently pursue and complete without interruption or delay all actions necessary to integrate Consultant's merchant banking processing activities, capabilities and certifications with Chase Paymentech within the time required by Chase Paymentech.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

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

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

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

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

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

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

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

VIII. NOTICE

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
Finance Department

If intended for Consultant, to:

IX. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, Consultant 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.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "Short Term Rental Permitting, Collections and Compliance Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature 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 Finance Department. 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 whereby City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Remainder of Page Intentionally Left Blank

| <u>TYPE</u> | <u>AMOUNTS</u> |
|--|---|
| 1. Workers' Compensation | Statutory |
| 2. Employers' Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| 3. Commercial General Liability Insurance to include coverage for the following: 1. Premises/Operations 2. Products/Completed Operations 3. Personal/Advertising Injury 4. Contractual Liability | For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage |
| 4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles | <u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence |

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

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto 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.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the

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

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

10.10 It is 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.

10.11 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 the City shall be limited to insurance coverage provided.

10.12 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, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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 paragraph.

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. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: NONE. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the Director in writing, prior to the provision of any services by said subcontractor.

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

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 prior written consent of the Director. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

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

XIII. INDEPENDENT CONTRACTOR

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

between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Non-discrimination. As a condition of entering into this agreement, Consultant represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IIIC.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. Consultant 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 Consultant 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 shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

XV. CONFLICT OF INTEREST

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

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither

officers nor employees of the City. Consultant further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. The Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be

construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below (but not attached hereto is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

- A. Consultant's Best And Final Offer dated _____, 2018; and
- B. Consultant's Proposal dated _____, 2018

XXVI. ENTIRE AGREEMENT

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

XXVII. PROHIBITED CONTRIBUTIONS

27.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

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

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

EXECUTED and **AGREED** to as of the dates indicated below, to be effective from and after the Effective Date.

CITY OF SAN ANTONIO

**CONSULTANT
HOST COMPLIANCE LLC**

(Signature)

(Signature)

Printed Name: Troy Elliott

Printed Name:

Title: Deputy Chief Financial Officer

Title: Chief Executive Officer

APPROVED AS TO FORM

Robert K. Nordhaus
Assistant City Attorney