

PROFESSIONAL SERVICES AGREEMENT
for
WRITTEN PROMOTIONAL EXAMINATIONS
and
PROMOTIONAL ASSESSMENT CENTER
for the SAN ANTONIO FIRE DEPARTMENT

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. 2019-XX-XX-XX and approved on the _____ day of _____, 2019 and PSI Services LLC, "Contractor", collectively, the "Parties". The Parties agree, by the execution of this contract, to the mutual obligations and the performance and accomplishment of the tasks described below.

I. DEFINITIONS

1.1 As used in this Agreement, the following terms shall have meanings:

"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" is defined as Human Resources Director and/or Civil Service Director.

II. TERM

2.1 This contract term shall be for a three year period beginning April 5, 2019 and ending April 4, 2022 unless terminated earlier pursuant to the provisions hereof. **CITY** may, at its option, with prior written notice and without the need for further authorization from the San Antonio City Council, extend this contract for one additional two-year term.

2.2 **CONTRACTOR** and **CITY** recognize that the continuation of any contract after the close of any given fiscal year of **CITY**, which fiscal year ends on September 30, shall be subject to appropriation of funds for the contract. Should funds not be appropriated, this contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

III. SCOPE OF SERVICES

3.1 **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 to Contractor.

3.2 **WRITTEN PROMOTIONAL EXAMINATION**

A. Within 45 calendar days after receiving a request from the **CITY**,

CONTRACTOR shall complete a properly structured, updated, detailed job/task analysis for the positions of Fire Engineer, Fire Lieutenant, Fire Captain, and District Fire Chief in the San Antonio Fire Department. Each written examination shall consist of questions relating to the duties of the classification of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related written examinations.

- B. **CONTRACTOR** shall prepare a validated job-related written examination and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.
- C. **CONTRACTOR** shall prepare each examination in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, to include but not limited to, EEOC, ADA, and Department of Justice.
- D. **CONTRACTOR** shall prepare a master examination for each rank, with 100 questions per examination drawn from a pre-approved list of study materials, and answer keys for each of the examinations constructed. **CONTRACTOR SHALL DELIVER SAME TO THE** Human Resources Director no later than two (2) weeks prior to the date of each examination, a camera-ready master examination and an answer key. **CONTRACTOR** must have the capability to complete the process of developing and delivering a validated examination within a minimum of 45 days of receiving notification by the **CITY**.
- E. **CONTRACTOR** shall develop questions that are unique to each particular examination.
- F. **CONTRACTOR** shall ensure primary and active involvement in all phases of the scope of work by a principal of the firm.
- G. **CONTRACTOR** shall prepare for the defense of, and defend, any examination questions which may be appealed during the five (5) day review period. This work will be compensated at a pre-determined rate. **CONTRACTOR** shall correct any manifest errors.
- H. **CONTRACTOR** shall compile item analyses and other statistics for disparate impact and submission of statistical reports upon request.
- I. **CONTRACTOR** shall provide litigation consulting and expert testimony, as and when needed, to be compensated at a pre-determined hourly rate.
- J. **CONTRACTOR** shall ensure compliance with Chapter 143 of the Local Government Code and the current Collective Bargaining Agreement between The City of San Antonio and the International Association of Fire Fighters Local 624, as applicable, with regard to the development

and administration of the written promotional exam.

- K. **CONTRACTOR** shall ensure that all services shall be performed to the satisfaction of the Director. **CITY** shall have exclusive use of the examinations including all examination questions and scenarios developed for the **CITY**.
- L. **CONTRACTOR** shall prepare the examinations in a manner that ensures the strictest confidentiality regarding all aspects of the process. **CONTRACTOR** shall perform all services required and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services shall be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.

3.3 PROMOTIONAL ASSESSMENT CENTER

- A. **CONTRACTOR** shall conduct a properly structured, updated, detailed job/task analysis for the position of District Fire Chief in the San Antonio Fire Department. The assessment center process shall be designed so that all exercises are related to the requirements of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related assessment center.
- B. **CONTRACTOR** shall prepare, administer and score a validated job-related assessment center process and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.
- C. **CONTRACTOR** shall provide the City with a list of potential assessors who meet the criteria set forth in the SAFD CBA. Final assessor selection shall be made by the City in collaboration with the Union.
- D. **CONTRACTOR** will consult and meet with City representatives (HR & SAFD) to ensure selection of assessors and support during assessment center exercise selection.
- E. **CONTRACTOR** is responsible for providing an orientation for candidates participating in the assessment center, as well as training assessors to complete any required scoring for the exercises.
- F. **CONTRACTOR** will provide assessment center materials, supplies and packages for all candidates expected to sit for the assessment center. Materials and supplies provided must be sufficient for candidates to prepare

for the assessment center exercises. Supplies should include: pens, paper, pencils, highlighters, paperclips, staples, staplers, note cards, markers, flip board/easel boards, rulers, tape dictionaries, and timers.

- G. **CONTRACTOR** will provide assessment center exercise packets for all candidates expected to sit for the assessment center. Packets must be prepared, sealed, and individually numbered after validation so that they may be distributed to candidates in a timely manner.
- H. **CONTRACTOR** will prepare a validated job-related assessment cadre using a variety of exercises as agreed to between the **CITY** and the Union. Examples of past exercises include: In-Basket; Problem Solving/analysis; Oral Resumes/Structured Interviews; Leaderless Group Presentation; Role Playing; Memo/Report Writing; Oral Presentation/Plan Preparation; Staff Meeting; Special Event/Operations; and others as they are established and determined to be reasonably valid predictors of job related characteristics.
- I. **CONTRACTOR** shall prepare, staff, administer, and score each assessment center process in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, including but not limited to, EEOC, ADA, and Department of Justice.
- J. **CONTRACTOR** shall compile item analysis and other statistics for disparate impact and submission of statistical reports upon request.
- K. **CONTRACTOR** shall provide litigation consulting and expert testimony as and when needed, to be compensated at a pre-determined hourly rate.
- L. **CONTRACTOR** shall ensure compliance with the current Collective Bargaining Agreement between the City of San Antonio and the International Association of Fire Fighters Local 624, as applicable, with regard to the development and administration of the assessment center process.
- M. **CONTRACTOR** shall perform all services required with active involvement in the scope of work of a principal of the firm, and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services will be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.
- N. **CONTRACTOR** shall ensure that all services are to be performed to the satisfaction of the Director.

COORDINATION WITH THE CITY

3.4 The **CITY** agrees to provide sufficient cooperation with respect to any data collection steps during the job analysis and test development phases. The **CITY** will coordinate diverse assessment center panels, interview schedules and identify interview locations as necessary.

- A. The **CITY** agrees to prepare and post the examination announcements and registration lists.
- B. The **CITY** agrees to coordinate and acquire use of the facilities in which to hold the examination.
- C. The **CITY** agrees to administer and score the written promotional examinations.
- D. The **CITY** agrees to develop, approve and distribute the eligibility lists/written examination scores.
- E. The **CITY** will coordinate the selection and availability of assessment board members in accordance with requirements established in the CBA with regard to staffing and conducting District Fire Chief assessment centers.
- F. The **CITY** will provide administrative support with respect to data collection steps during job-task analysis and test development; will coordinate interview schedules; and identify interview locations as necessary.

3.5 The **CONTRACTOR** shall hold periodic conferences with the **CITY** designee so that the project, as developed, shall have the full benefit of **CITY's** experience and knowledge of existing needs and facilities and be consistent with its current policies and standards.

3.6 **CITY** shall provide written notice to **CONTRACTOR** of any errors or omissions discovered in **CONTRACTOR's** services, or performance, or of any development that affects the scope or timing of **CONTRACTOR's** services.

3.7 All work performed by **CONTRACTOR** hereunder shall be performed to the satisfaction of Director. The determination made by the 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 the 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 the 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 the Director, of all services and activities set forth in this Agreement, **CITY** agrees to pay **CONTRACTOR** an amount not to exceed \$835,300.00 as total compensation, to be paid to **CONTRACTOR** as follows:

PRICE SCHEDULE

#	Item	Qty*	Unit Price	Total Price
ED1.A	Development of Fire Engineer Written Exam	5	\$18,000	\$90,000
ED1.B	Development of Fire Engineer Written "B" Exam	1	\$10,000	\$10,000
ED2.A	Development of Fire Lieutenant Written Exam	4	\$18,000	\$72,000
ED2.B	Development of Fire Lieutenant Written "B" Exam	1	\$10,000	\$10,000
ED3.A	Development of Fire Captain Written Exam	4	\$18,000	\$72,000
ED3.B	Development of Fire Captain Written "B" Exam	1	\$10,000	\$10,000
ED4.A	Development of District Fire Chief Written Exam	4	\$18,000	\$72,000
ED4.B	Development of District Fire Chief Written "B" Exam	1	\$10,000	\$10,000
ED4.C	Development & Administration of District Fire Chief Assessment Center	4	\$35,800	\$143,200
Total Cost for Examination Development				\$489,200

Rate for Defense of Appealed Test Questions	\$5,200.00 per exam
Rate for Expert Testimony in the Event of Litigation	\$ 300.00 per hour
Rate for Job-Task Analysis per request	\$12,800.00 per rank
Rate for Disparate Impact Study per request	\$1,500.00 per analysis

**Quantity reflected is an estimate based on past experience and is subject to possible increase in an amount up to \$835,300.00 dependent on number of exams ordered or services requested.*

*All pricing above includes any applicable travel expenses. Row ED4.C- Includes travel expenses, assessor-related travel expenses (see Contractor proposal p. 55), and facility costs based on a quote provided by the Holiday Inn San Antonio River Walk. This also includes a contingency fund to cover reasonable alterations to the proposed Assessment Center site set-up and administration. Assessment Center pricing includes all costs to develop and administer the Assessment Center including but not limited to development of content and exercises; printing test materials; Assessment Center exercise supplies; securing Assessment Center site; Assessor travel costs and meals.

4.2 **CITY** agrees to make payment to **CONTRACTOR** based upon work completed in the performance of this contract upon receipt of an itemized bill or statement, provided such work is approved by the Director. Payment shall be made for services completed as to each item listed above at the respective rate indicated in the fee schedule.

4.3 Total payment to **CONTRACTOR** cannot exceed those amounts set forth above,

without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an Ordinance therefore.

4.4 The **CITY** agrees to pay for expert testimony, as and when needed, to be compensated at the rate of \$300 per hour.

4.5 **CONTRACTOR** acknowledges and agrees that it shall provide services under this **CONTRACT** at a certain level with a certain degree of accuracy and timeliness. Therefore, **CONTRACTOR** agrees to the following performance standards and administrative fee adjustments:

CATEGORY	SERVICE LEVEL AGREEMENT	PENALTY (as a % of the related fee)
Accuracy	If two (2) questions are rejected/amended by the COMMISSION because the question was not drawn from the specified study material, the answer key was in error, or due to a typographical/administrative error on the part of the CONTRACTOR .	20%
Accuracy	If three (3) questions are rejected/amended by the COMMISSION because the question was not drawn from the specified study material, the answer key was in error, or due to a typographical/administrative error on the part of the CONTRACTOR .	30%
Accuracy	If four (4) or more questions are rejected by the COMMISSION because the question was not drawn from the specified study material, the answer key was in error, or due to a typographical/administrative error on the part of the CONTRACTOR .	40%
Timeliness	Timelines established for the development, delivery, administration and scoring of written exams and assessment centers are not met.	40%

*Above performance standards do not apply to key changes made to allow multiple answers or change answers that do not stem from an error but rather from an issue of interpretation or practice as opposed to law or policy.

4.6 Nothing contained in this **CONTRACT** shall require **CITY** to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this **CONTRACT**. **CITY** shall not be required to make any payments to **CONTRACTOR** at any time **CONTRACTOR** is in default under this **CONTRACT**.

4.7 Despite the **CITY'S** possible approval of an assignee or subcontractor, the **CITY** shall, in no event, be obligated to any third party, including any assignee or subcontractor of the **CONTRACTOR**, for performance of work or services, nor shall **CITY** funds ever be used for payment of work or services performed prior to the date of **CONTRACT** execution or extending beyond the expiration date of this **CONTRACT**.

4.8 No additional fees or expenses of **CONTRACTOR** shall be charged by **CONTRACTOR** nor be payable by **CITY**. The parties hereby agree that all compensable

expenses of **CONTRACTOR** have been provided for in the total payment to **CONTRACTOR** as specified in section 4.1 above. Total payments to **CONTRACTOR** cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.9 Final acceptance of work products and services require written approval by **CITY**. The approval official shall be Director. 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 BY THE CONTRACTOR

5.1 All services are to be performed to the satisfaction of the Director, and the **CONTRACTOR** shall own the documents or videos used to conduct the examinations, while the City of San Antonio shall have use of the examinations and candidate responses to administer the examinations, only to determine compliance with the terms of the contract between the **CITY** and the **CONTRACTOR**, and to respond to and resolve any questions regarding the adequacy and accuracy of any examination as prepared or administered under the contract between the parties."

5.2 The **CITY** and the **CONTRACTOR** acknowledge and agree that all documents and videos containing questions or answers, designated as "test materials", created or used pursuant to this Contract in the conduct of a promotional exam under the terms of this contract, are considered confidential and the sole property of the **CONTRACTOR**. This is done to assure the accuracy of the promotional examinations administered under this contract and to prevent unfair advantage to candidate(s) by preventing prior access to the test materials used in the examinations. The parties agree to notify each other in the event any test material related to this contract shall become the subject of any request or legal claim for access to any document or video in the possession of the **CITY** or the **CONTRACTOR** for which **CONTRACTOR** has a claim of copyright or proprietary confidentiality.

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

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

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 CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.

7.2 Termination by Notice. This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.

7.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting

party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.

7.4 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 CONTRACT shall automatically terminate as of the effective date of such prohibition.

7.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from CONTRACTOR to CITY or to such person(s) or firm(s) as the CITY may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at CONTRACTOR'S sole cost and expense. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient on the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within 30 calendar days after the effective termination date.

7.6 Upon termination or cancellation of this CONTRACT, CITY may immediately commence audit of CONTRACTOR'S books, accounts, and records. Within 30 calendar days after being notified by CITY of the results of said audit, CONTRACTOR shall pay CITY any amount shown by said audit to be owed CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

7.7 If CITY conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between CONTRACTOR and CITY. The results from said third audit shall be final.

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
Attn: Human Resources Director Human
Resources Department
111 Soledad, Suite 123
San Antonio, TX 78205

If intended for Contractor, to:

PSI Services LLC
611 N. Brand Blvd. 10th Floor
Glendale, CA 91203

IX. [Reserved]

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 San Antonio Fire Department, which shall be clearly labeled "SAFD Promotional Exam Consultant" 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 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 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 San Antonio Fire 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 CONTRACTOR's financial integrity is of interest to the CITY; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the 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:

<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: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Professional Liability (Claims-made)	\$1,000,000 per claim, to pay on behalf of

basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	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.
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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 the CONTRACTOR and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of CONTRACTOR. Respondent 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 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.: San Antonio Fire
Department 315 S. Santa Rosa
Suite 2000
San Antonio, Texas 78207

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: (1) 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; (2) provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy; (3) workers' compensation, employers' liability, general liability, and automobile liability policies provide for a waiver of subrogation in favor of CITY; and (4) provide advance written notice directly to CITY of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten 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 payments 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, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or 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 CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the 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 OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this Agreement.

11.2 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.

11.3 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 workers' 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 It is CITY's understanding and this Agreement is made in reliance thereon, that **CONTRACTOR** 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 City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of **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 contractors; that the doctrine of *respondiat superior* shall not apply as between **CITY** and **CONTRACTOR**, its officers, agents, employees, contractors, subcontractors and other contractors, 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 it 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.

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 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.

XX. LAW APPLICABLE

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

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

XXI. LEGAL AUTHORITY

21.1 The signer of this Agreement for **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. INCORPORATION OF EXHIBITS

24.1 **CONTRACTOR** understands and agrees that all exhibits referred to in this Agreement are intended to be and hereby are, specifically made a part of this Agreement. Said exhibits are as follows:

- Exhibit 1 CITY'S Request for Proposal
- Exhibit 2 CONTRACTOR'S Proposal

24.2 CONTRACTOR understands and agrees that Exhibits 1 and 2 are a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by CONTRACTOR as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this Agreement.

24.3 The terms of this Agreement shall be final and binding where there is any conflict between the terms of CITY'S Request for Proposal, CONTRACTOR'S Proposal and the terms of this Agreement; CITY'S. Request for Proposal shall control where it conflicts with CONTRACTOR'S Proposal.

XXV. ENTIRE AGREEMENT

25.1 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.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

**CONTRACTOR
PSI SERVICES LLC**



Erik Walsh, Deputy City Manager

Peter Celeste, President

Approved Form:

Krista Cover, Assistant City Attorney