

ORDINANCE 2018-06-14-0454

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH GUIDESPARK, INC. TO PROVIDE INNOVATIVE COMMUNICATION METHODS TO EDUCATE BENEFIT-ELIGIBLE CIVILIAN AND UNIFORMED POLICE EMPLOYEES REGARDING THE CITY'S BENEFIT PLANS FOR A THREE YEAR TERM BEGINNING JULY 1, 2018 AND ENDING JUNE 30, 2021, WITH TWO OPTIONAL ONE YEAR RENEWAL TERMS IN AN AMOUNT NOT TO EXCEED \$254,000.00.

* * * *

WHEREAS, the City wishes to enter into a Professional Services Agreement with GuideSpark, Inc. to provide innovative benefit communication methods to educate Civilian and Uniformed Police employees regarding the City's benefit plans for a three year term with two optional one year renewal periods for an amount not to exceed \$254,000.00, and

WHEREAS, the City of San Antonio solicited proposals and a formal review was conducted; and

WHEREAS, as a result of the review process, staff recommends that GuideSpark, Inc. be awarded the contract; **NOW THEREFORE**:

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

SECTION 1. The City Manager or her designee is hereby authorized to execute a professional services contract with GuideSpark, Inc. to provide innovative benefit communication services beginning July 1, 2018, and ending June 30, 2021 with two optional one year renewal periods. A copy of the contract, in final form, is attached hereto as **Exhibit A**. The terms and conditions of said contract are hereby approved.

SECTION 2. Funding in the amount of \$54,000.00 for this ordinance is available in Fund 75002000 and Cost Center 1002012001 and General Ledger 5201040 as part of the Fiscal Year 2018 Budget.


SECTION 3. The amount is not to exceed the budgeted amount will be encumbered upon issuance of a purchase order, and payment is authorized GuideSpark, Inc. Additional funding for this ordinance is contingent upon City Council approval of the City's operating budget and the availability of funds for subsequent Fiscal Years

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

KC
6/14/18
Item No 29

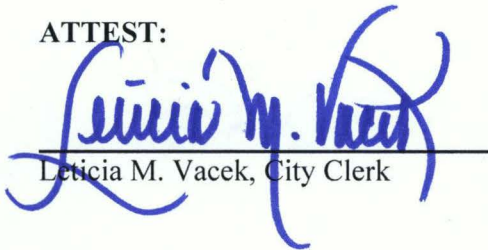
SECTION 5. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage hereof.

PASSED AND APPROVED this 14th day of June, 2018.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	29 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19A, 19B, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33)						
Date:	06/14/2018						
Time:	10:22:38 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving professional services agreement with GuideSpark, Inc. to provide innovative communication methods to educate benefit-eligible civilian and uniformed Police employees regarding the City's benefit plans for a three year term beginning July 1, 2018 and ending June 30, 2021, with two renewal terms of one year each at the City's option, with total compensation of \$254,000.00. [Ben Gorzell, Chief Financial Officer; Lori Steward, Human Resources Director]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

KC
6/14/18
Item No 29

EXHIBIT A

EXHIBIT A

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, and **GUIDESPARK INC.**, having its principal place of business at 1400a Seaport Boulevard, Redwood City, CA (hereinafter referred to as "**VENDOR**").

I. PURPOSE

- 1.1 The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** shall provide Human Resources benefit communication services.

II. SCOPE OF SERVICES

- 2.1 The **VENDOR** shall work with the City of San Antonio, and with appropriate **CITY** personnel to perform any and all related tasks required by the **CITY** in order to fulfill the purposes of this CONTRACT. The **VENDOR** agrees that Kimberley Schumacker or equivalent Account Executive will be **VENDOR'S** point of contact for the services to be performed under this CONTRACT. The **CITY** is an Equal Opportunity Employer and does not discriminate. **VENDOR** shall conduct all activities in accordance with this and all other applicable federal, state and local requirements.
- 2.2 **VENDOR** shall provide the following services:
- a. Develop a detailed communication strategy to include videos that address communications of benefit plans or programs to reach all levels of staff and retired employees in various locations.
 - b. Provide a method to evaluate the effectiveness of the communication outreach.
 - c. Provide prompt updates to communications to respond to changes in federal or state regulations or City plan design changes.
 - d. Develop and distribute targeted messaging for City employees and retirees and their dependents through a variety of platforms including blogs, social media, weekly e-newsletters and bimonthly print newsletters.
 - e. Develop multimedia communication tools that the City staff can utilize.
- 2.3 **VENDOR** shall perform services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

- 2.4 **VENDOR** acknowledges that the services listed below are identified as additional services the **CITY** may request **VENDOR** to provide. If requested, **VENDOR** shall provide said service(s) under the same terms and conditions of this **CONTRACT** and without the need for further Council action provided funding is appropriated. **CITY** will affect such a request for contingent additional services by forwarding a written request, executed by the Director of Human Resources or her designee, to **VENDOR**. Within said request, the Director of Human Resources shall state the scope of services **VENDOR** is to provide, the period of time within which said service is to be completed; and the consideration to be paid by **CITY** for the additional service provided, as agreed upon with **VENDOR**.

The following services are herein designated as contingent additional services:

Additional communication videos to address updates in Federal or State laws impacting plan members or to address plan changes or updates including other Human Resources areas.

III. SUBCONTRACTING

- 3.1 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 Contract. Compliance by subcontractors with this Contract shall be the responsibility of **VENDOR**. **CITY** shall in no event be obligated to any third party, including any subcontractor of **VENDOR**, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the **CITY**.
- 3.2 Except as otherwise stated herein, **VENDOR** may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the **CITY**. As a condition of such consent, if such consent is granted, **VENDOR** shall remain liable for completion of the services outlined in this Contract in the event of default by the successor **VENDOR**, assignee, transferee or subcontractor.
- 3.3 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **VENDOR** assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, **CITY** may, at its option, cancel this Contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, in accordance with Article XIII. Termination, notwithstanding any other remedy available to **CITY** under this Contract. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this Contract, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

IV. TERM OF CONTRACT

- 4.1 The term of the contract is for a three year period beginning July 1, 2018. The term contains at City's sole option two one year renewal periods. Renewals must be in writing and signed by the Mayor or his designee without further action by City Council provided funds are appropriated.

V. PAYMENT FOR SERVICES

- 5.1 In consideration of the professional services to be rendered by **VENDOR**, **CITY** shall pay a total cost not to exceed an amount of \$254,000.00 **CITY** shall pay the professional fee upon receipt of detailed invoices of services on an annual basis as follows:

ONE-TIME FEE TOTAL \$ 4,000
ANNUAL SUBSCRIPTION FEE \$ 50,000

This fee shall constitute full and complete payment for all services to be performed by **VENDOR** under this **CONTRACT**.

- 5.2 **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than **VENDOR** for payment of any monies or provision for any goods or services.

VI. CONFIDENTIAL WORK

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by the **VENDOR** under this **CONTRACT** shall be disclosed or made available to any individual or organization by the **VENDOR** without the prior written approval of the **CITY**.
- 6.2 The **VENDOR** shall establish a method to secure the confidentiality of records and information that the **VENDOR** may have access to, in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the **CITY'S** or its authorized representatives' right of access to records or other information under this **CONTRACT**.
- 6.3 If the **VENDOR** receives inquiries regarding documents within their possession pursuant to this **CONTRACT**, the **VENDOR** shall immediately forward such request to the **CITY** for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 **VENDOR** will also own all right, title and interest in and to any Products that **VENDOR** creates, develops or otherwise delivers to City in connection with the Software Service hereunder, and hereby provides City with a worldwide, non-exclusive, non-transferable license to use those customized portions of the

Products for City's internal business use for the relevant Subscription Term. Notwithstanding the foregoing, as between **VENDOR** and City, City owns all right, title and interest (including all Intellectual Property Rights) in and to any City software, City systems, City Data, City Confidential Information, City Trademarks or other City materials provided by City to **VENDOR** or otherwise accessed by **VENDOR** in connection with this Agreement.

- 7.2 City grants **VENDOR** a worldwide, royalty-free, non-exclusive, non-transferable (except as provided for in Section 15.1 (Assignment)) license for the relevant Subscription Term, to use any City Data and User Data for the purposes of creating and providing the Professional Services and Software Service.
- 7.3 Subject to the terms of this **CONTRACT**, **VENDOR** grants **CITY** a limited, non-exclusive, non-transferrable license for the Term to use, copy, modify, display and distribute the Promo Templates, solely for the Purpose described in the next sentence. The "Purpose" means the purpose of increasing **CITY** workforce awareness of **VENDOR**'s online training programs. **CITY** may modify each Promo Template in a limited manner, solely by adding the **CITY**'s logos, other trademarks and business appropriate text, as applicable, into each Promo Template. The text added by **CITY** to each Promo Template may not: (a) be text intended to shock, insult or offend others or (b) contain any statement disparaging of, or reflecting unfavorably upon, **VENDOR**. City shall not modify the Promo Templates, other than as explicitly stated above. City shall not distribute the Promo Templates to any third party, other than its own employees and consultants with a need to use the Promo Templates for the Purpose. City shall not sell or otherwise commercialize the Promo Templates. Notwithstanding anything to the contrary herein, **VENDOR** may terminate the license to the Promo Templates immediately if City breaches the terms and restrictions set forth in this Section 7.3. Upon termination or expiration of this Agreement, City shall discontinue all use, display and distribution of the Promo Templates and shall take down all tangible and online content incorporating the Promo Templates.
- 7.4 **VENDOR** retains all right, title and interest in Promo Templates; subject to City's ownership of the City Trademarks and text inserted by **CITY** into the Promo Templates.

VIII. NON-WAIVER

- 8.1 Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 Contract 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.

IX. INSURANCE REQUIREMENTS

- 9.1 A) Prior to the commencement of any work under this Agreement, Vendor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Risk Department, which shall be clearly labeled "HR Benefit Communications GuideSpark" 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 City's Risk Management Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- B) 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.
- C) A Vendor's financial integrity is of interest to the City; therefore, subject to Vendor's right to maintain reasonable deductibles in such amounts as are approved by the City, Vendor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Vendor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <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
2. Professional Liability (Claims-made basis). To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

D) 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. Vendor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Vendor shall pay any costs incurred resulting from provision of said documents.

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

E) Vendor 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 or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Vendor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Vendor'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.

G) In addition to any other remedies the City may have upon Vendor'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 Vendor to stop work hereunder, and/or withhold any payment(s) which become due to Vendor hereunder until Vendor demonstrates compliance with the requirements hereof.

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

I) It is agreed that Vendor'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.

J) 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..

K) Vendor and any Subcontractors are responsible for all damage to their own equipment and/or property.

L) The City will in no event be responsible for injury claims from the subcontractors while performing work on City premises.

X. INDEMNIFICATION

10.1 VENDOR 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 VENDOR's activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, Vendor or subcontractor of VENDOR, 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 VENDOR 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.

- 10.2 **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.**
- 10.3 **VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR'S activities under this contract.**

XI. INDEPENDENT CONTRACTOR

- 11.1 **VENDOR covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that VENDOR 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, Vendors, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between City and VENDOR, its officers, agents, employees, Vendors, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and VENDOR. 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 VENDOR under this Contract and that the VENDOR has no authority to bind the City.**

XII. TERMINATION

- 12.1 **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.**
- 12.2 **TERMINATION BY NOTICE: The 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 thirty (30) calendar days or more than ninety (90) days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party. 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 at the effective date of termination.**

- 12.3 **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 on 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 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 12.4 **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.
- 12.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from the **VENDOR** to the **CITY** or to any person or entity that the **CITY** may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the **VENDOR'S** sole cost and expense.
- 12.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the **CITY**), the **VENDOR** shall submit to the **CITY**, its claim, in detail, for the monies owed by the **CITY** for services performed under this CONTRACT through the effective date of termination.
- 12.7 Upon termination or cancellation of this CONTRACT, the **CITY** may immediately commence an audit of the **VENDOR'S** books, accounts, and records. Within thirty (30) calendar days after being notified by the **CITY** of the results of said audit, the **VENDOR** shall pay the **CITY** any amount shown by said audit to be owed the **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

XIII. CONFLICT OF INTEREST

- 13.1 **VENDOR** 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 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.

- 13.2 **VENDOR** warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 13.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 13.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY'S** option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

XIV. NOTICE

- 14.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by Certified Mail, return receipt requested, postage prepaid to the **CITY** or to the **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

**City of San Antonio
Human Resources Department
Benefits Division
111 Soledad
San Antonio, Texas 78205**

GUIDESPARK

**GuideSpark, Inc.
1400a Seaport Boulevard
Redwood, CA 94063**

XV. CAPTIONS

- 15.1 The captions to the various clauses of this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the substance of the terms and conditions of this CONTRACT.

XVI. SUCCESSORS AND ASSIGNS

- 16.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

XVII. GOVERNING LAW AND LEGAL FEES

- 17.1 **THIS CONTRACT 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.**
- 17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 17.3 The Parties expressly agree that in the event of litigation, each party waives its right to attorneys' fees.

XVIII. ENTIRE AGREEMENT

- 18.1 This CONTRACT, including the Exhibits, embodies the final and entire agreement of the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, verbal or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto. It is agreed that CITY'S Request for Proposal, VENDOR'S Proposal and Master Subscription Agreement are part of this contract and are attached as Exhibit A, B and C. The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of CITY's Request for Proposal, VENDOR's Proposal or Master Subscription Agreement and the terms of this CONTRACT; CITY'S Request for Proposal shall control where it conflicts with VENDOR's Proposal or Master Subscription Agreement.

XIX. LEGAL AUTHORITY

- 19.1 The signer of this CONTRACT for the **VENDOR** represents, warrants, assures, and guarantees full legal authority to execute this CONTRACT on behalf of the **VENDOR**

and to bind the **VENDOR** to all the terms, conditions, provisions and obligations herein contained.

XX. GENDER

- 20.1 Words of any gender used in this **CONTRACT** shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include plural, unless the context otherwise requires.

XXI. SEVERABILITY

- 21.1 If any clause or provision of this **CONTRACT** 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 **CONTRACT** 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 **CONTRACT** that is invalid, illegal or unenforceable, there be added as part of the **CONTRACT**, 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.

XXII. ACKNOWLEDGEMENT

- 22.1 Each of the parties acknowledges that it has read this **CONTRACT**, understands its contents and executes this **CONTRACT** voluntarily.

EXECUTED by the **CITY** and by the **VENDOR**, acting through their duly authorized officials, as of the dates indicated below.

CITY OF SAN ANTONIO, TEXAS

GUIDESPARK, INC. *LT*
LT

Ben Gorzell, Jr., CPA
Chief Financial Officer

Valerie Burman
Valerie Burman (Jun 7, 2018)

Valerie Burman
Senior Vice President
Solutions and Strategy

Date:

Date: Jun 7, 2018

Approved as to form:

Krista Cover
Assistant City Attorney

Signature: 
Legal Team (Jun 7, 2018)

Email: legal@guidespark.com