

## PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS        }  
                                  }  
COUNTY OF BEXAR    }

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter "City"), a Texas Municipal Corporation acting by and between the City of San Antonio (hereinafter "City"), a Texas Municipal Corporation acting by and through its City Manager pursuant to Ordinance Number 2016-09-29-0744, passed and approved on September 29, 2016, and Soria, Inc., Corporate Payroll Administrators, Inc., acting by and through its President, Guillermo Soria, CPA (hereinafter "Contractor").

**FOR VALUABLE CONSIDERATION**, the parties hereto 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. SCOPE OF SERVICES

A. Contractor shall provide the following payroll services:

1.1 Contractor shall provide Payroll Processing Services for a minimum of eleven (11) separate employers, which employers consist of the Mayor and ten (10) City Council members. Contractor understands and accepts that it is possible, due to term limitations and unforeseen retirements, that the number of employers could exceed eleven (11) in a given calendar year. Contractor also understands that each employer may have up to six (6) five full-time administrative assistants ("Aides") or the equivalent thereof. As such, the total number of Aides at any one time may vary from sixty-six (66) or more. Contractor shall maintain electronic files on all such employees and shall make the information in those files available to City, within ten (10) business days of such request, in accordance with Section IV. Records-Audit and Retention.

1.2 Contractor shall provide payroll processing services twice a month, to include, but not be limited to, the creation of an employee payroll check or direct deposit, as requested by the respective employee, complete with earnings statements, withholding and remittance to the appropriate Federal Agency, State Agency or entity for federal income taxes, social security taxes, Medicare taxes, Unemployment Taxes and voluntary and involuntary deductions, to be calculated based on the salary information provided to Contractor by the employer, through the City. Contractor warrants that the appropriate Federal Income Taxes, Social Security Taxes, Medicare Taxes and Unemployment Taxes will be remitted both in a timely fashion and in compliance with Federal and State Tax Guidelines for each employer. Contractor shall be liable and responsible for any late fees, penalties, interest or other related charges incurred in connection with Contractor's failure to file or remit, in a timely manner, any applicable taxes or reports.

1.3 Contractor shall give the Mayor and each Council member the option of using facsimile signatures in connection with issuance of employee checks. Contractor shall issue checks by using a facsimile of each employer's signature, as appropriate, and then deliver same to the appropriate City office, through the Assistant to the City Council or the Executive Assistant, in sealed window envelopes, segregated by employer. Alternatively, Contractor, where appropriate, shall issue checks, ready for the respective employer's signature, and then deliver same to the appropriate City office, through the Assistant to the City Council or the Executive Assistant, with the checks segregated by employer. Checks shall be dated and delivered to the City, by Contractor, on the 15<sup>th</sup> and 30<sup>th</sup> day of each month or as otherwise requested by City, said delivery to be accomplished either by hand-delivery by Contractor or by courier, at no additional cost to City.

1.4 Contractor shall provide full tax reporting and tax compliance services to include preparation of quarterly and year-end tax returns filed electronically or ready for signatures as required, filing of tax returns with the appropriate tax agencies and W-2 processing with envelopes, delivered to the appropriate City office, through the Assistant to the City Council or the Executive Assistant. The appropriate Federal Income Taxes, Social Security Taxes, Medicare Taxes and Unemployment Taxes must be remitted both in a timely fashion and in compliance with Federal Tax Guidelines for each employer.

1.5 Contractor shall provide the City with payroll reports, segregated by employer, to include year-to-date reports with each payroll, payroll registers for the current pay period that include check numbers and amounts, deduction registers and any other reports required to satisfy the needs of the employer for the City to individuals designated by the Assistant to the City Council or the Executive Assistant.

1.6 Contractor agrees to provide payroll reports (custom, if applicable), in the agreed upon medium; implement a billing process, reimbursement process or utilization of a City Payroll Account; utilize security mechanisms to protect City funds in the event a City Payroll account should be utilized against which to draw payroll checks (i.e., positive pay, check security and fraud protection); utilize an appropriate payroll processing methodology and interact with the City, in day-to-day processes, from new hire reporting process, payroll processing and final payroll processing upon termination; implement back-up procedures to ensure continuation of service in the event of unforeseen circumstances.

1.7 Contractor shall provide all services necessary to assist the Mayor and each Council member to set up each as an individual employer, with his or her own employees, and give each such employer access to his or her own respective account, said services to include, but not be limited to, obtaining individual Tax Identification Numbers.

1.8 Contractor shall provide, to each new employee, all necessary set-up services, including, but not limited to, the completion of all paperwork and documentation which may be required by local, state and federal law, rule or regulation.

- 1.9 Contractor shall calculate the payroll, utilizing software which is designed specifically for such purpose, and which contains applicable federal tax tables and the ability to calculate and track FUTA, SUTA and 941.
- 1.10 Contractor shall provide a summary report of the payroll, payroll tax liabilities, including FUTA, SUTA and 941, for each pay period, electronically or by fax, at 210-207-4072, to Controller for the City's Finance Department. This report shall be transmitted no later than 24 hours after Contractor receives complete payroll information required for processing.
- 1.11 Contractor shall draw direct deposits for employees and payroll tax liabilities, including FUTA, SUTA and 941, from the City Payroll Account, via ACH Direct, each pay period. Contractor shall ensure that all funds drawn from the City Payroll Account and held in Contractor's bank account shall be adequately collateralized by the financial institution in which such funds are held.
- 1.12 Contractor shall process paperwork and take necessary deductions from paychecks for health benefits.
- 1.13 Contractor and City acknowledge and agree that all funds drawn from the City Payroll Account and held in Contractor's bank account are the property of the City to be used solely in conjunction with this Agreement. Contractor further agrees to take all necessary action(s) to ensure that such funds shall not be garnished, attached or seized for any reason, including, but not limited to, Contractor's bankruptcy or debts.
- 1.14 Contractor shall set up an Electronic Federal Tax Payment System ("EFTPS") account for each separate employer, referencing the Employer Identification Number ("EN") assigned to same, in order to facilitate remittance of payroll taxes to the appropriate governmental entity.
- 1.15 Upon request, Contractor shall provide either City or any individual employer with electronic or hard copies of all payroll reports, including, but not limited to, payroll journals; journals; earnings reports; employee listings; employee check records; accruable benefits reports; journal entry reports-payroll; depository totals; EFTPS reports; payroll item reports; liability by pay item; check registers; payroll tax summaries; SUTA worksheets; workers' compensation reports; premium earnings reports; new hire reports; deductions registers; wage registers; tax deposit reports; employee payroll item configurations; and any custom reports as may be requested, all within ten (10) business days of such request, in accordance with Section IV. Records-Audit and Retention.
- 1.16 Contractor acknowledges that City establishes a maximum salary for each Aide through the City's Operating Budget Ordinance. The maximum salary for the Aides may be adjusted for each fiscal year under this Agreement. As such, Contractor shall track said payments to each employee on a City fiscal year basis to ensure that each employee is not paid in excess of the maximum salary per fiscal year, unless Contractor receives

written and authorized signed notification of an alteration of such amount from City, as authorized by ordinance. The salary is to be tracked for each Aide as they transition from employer to employer within City Council offices and Mayor office to ensure each employee is not paid in excess of salary maximum allowed.

1.17 Contractor agrees to perform all services in accordance with generally accepted accounting principles and other industry standards, as applicable.

1.18 Contractor shall ensure that a back-up of the payroll system, utilized in connection with this Agreement, is completed after each payroll run. Discs with the back-up information, as well as all reports which may have been requested pursuant to this Agreement, shall be stored in a fire-proof safe in an offsite location.

1.19 City shall provide Contractor, by either facsimile or electronic transmission, for its use in connection with the services provided hereunder, all reasonably necessary information and documentation required by Contractor, including the following:

- (a) Employer names
- (b) Facsimile of each employer's signature, as applicable
- (c) Employee names
- (d) Employee Social Security Numbers
- (e) Salary information
- (f) Voluntary and involuntary payroll deduction information, if any
- (g) City's payroll account number
- (h) Appropriate access to City's payroll account
- (i) Dates of hire and termination or separation of each employee

1.20 Contingent upon the receipt of approved timesheets from City by 12:00 pm on the 13<sup>th</sup> and 28<sup>th</sup>, Contractor shall submit each payroll run provided under this Agreement to City's Finance Department no later than 12:00 p.m. on the 14<sup>th</sup> and 29<sup>th</sup> of every month, except for the month of February when the second payroll is due no later than 12:00 p.m. on the day prior to the last day of the month.

1.21 Contractor shall verify all payroll runs prior to submission to City's Finance Department to ensure all changes requested by City are reflected accurately.

1.22 Contractor shall host a group health benefit plan for the Aides and shall include one representative to attend any necessary open enrollment sessions for the Aides.

## **II. TERM AND COMMENCEMENT OF WORK**

2.1 Unless early termination occurs pursuant to this Agreement, the term hereof shall be from October 1, 2016 through September 30, 2018. City, at its sole option, may elect to renew this Agreement for up to two additional one-year terms, subject to City Council approval.

### **III. CONTRACT PRICING AND BILLING**

3.1 City shall compensate Contractor in an annual base amount no greater than \$40,000.00 utilizing a fixed fee structure per payroll period in the amount of \$1,666.67 (base amount divided by 24 payroll periods) ("Payroll Fee"). Interim requested payroll runs will be processed at no additional charge unless prior written and signed authorization is provided by City.

3.2 City may compensate Contractor an additional annual amount not to exceed \$10,000 for additional services which are not set out in Section I of this Agreement but which are related to payroll services. Additional services include but are not limited to setup of each employer at \$250.00 per occurrence, consulting services, providing documentation for and attending meetings related to open records requests requested by outside third-parties set at \$75.00 per hour as required, and Affordable Care Act Reporting set annual fee of \$1,500.00.

3.3 Contractor agrees that all its labor, supervision of work, report reproduction, postage, typing travel, communication, computer access, materials, supplies, subcontractor costs, if any, and all other expenses necessary to complete the services stated herein, other than those enumerated above, shall be borne at Contractor's sole cost and expense.

3.4 In the event of an audit of City, Contractor agrees to make any necessary documents and time available to the auditing agency or organization and to perform any necessary work in preparation for such an audit, at no cost to City. In the event that Contractor attends such audit for City, however, Contractor shall charge City an hourly rate of \$75.00 for such attendance.

3.5 At such time as Contractor delivers the bi-monthly payroll, he shall provide an electronic bill to the Assistant to the City Council or the Executive Assistant that handles payroll. Each bill shall contain an itemized list of all charges and fees, with details if requested by City. Payroll should be one itemized (by district including the total of number of checks processed per district) invoice and additional services should be a separate itemized invoice.

3.6 Contractor is to prepare payroll according to approved timesheets, and Master Change List received from the City. Accordingly, if Contractor commits an error preventing recipient from receiving correct payroll on time, a penalty of 5% of the Payroll Fee will be assessed to the Contractor's bi-monthly payroll invoice.

### **IV. RECORDS - AUDIT AND RETENTION**

4.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, records and other evidence pertaining to this

Agreement and shall make such materials available to the City or any of its authorized representatives upon reasonable notice at all reasonable times and as often as City may deem necessary during the Agreement period, for purposes of inspection, examination, and making excerpts or copies of same.

4.2 The City reserves the right to audit this Agreement. All relevant documentation and records should be made available to the City or its designated representatives within ten (10) business days from receipt of written request.

4.3 Contractor shall provide immediate notice to the Assistant to the City Council in the event the Contractor receives any request(s) for information, by a third party, pertaining to the documentation and records referenced herein. Contractor understands and agrees that he shall promptly provide requested records to the City for further processing and handling of all requests.

4.4 Upon termination of the Agreement, Contractor shall deliver, to the Assistant to the City Council copies of any and all documents, papers and other records related to the employees and the provision of services under this Agreement, requested by the City or an employer, within ten (10) business days of such request, at the address provided herein.

## V. TERMINATION

5.1 For purposes of this Agreement, "termination" shall mean termination of this Agreement either by completion of the provisions of services required herein or earlier termination pursuant to any of the provisions hereof.

5.2 City may terminate this Agreement with Contractor, in accordance with this clause, in whole or in part, for any of the following reasons:

- a. Neglect or failure by Contractor to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or amendment thereof.
- b. Violation by Contractor of any rule, regulation or law to which Contractor is bound or shall be bound by terms of this Agreement.
- c. The City shall also have the right to terminate this Agreement or any portion thereof, if such termination is deemed by the City to be in the best interests of the City, upon thirty (30) days notice, said notice to be provided in accordance with Section XVI. Notices.

5.3 Upon City's decision to terminate, written notice of same immediately shall be provided to Contractor, at the address provided herein.

5.4 Upon receipt of notice to terminate this Agreement, all finished or unfinished documents, papers, records and other evidence documents, papers, records and other

evidence pertaining to the services rendered, by or on behalf of Contractor hereunder, shall be forwarded to City, as provided in Section IV. Audit and Retention.

5.5 Within thirty (30) days of the effective date of termination, Contractor shall submit to City its final and detailed claim for any monies owed by City for services performed under this Agreement, up to the date of termination, and for any necessary and proper work performed in the ensuing thirty (30) day period, to be determined after discussion with City; provided, however, that such payment does not exceed the maximum amount set out in Sections 3.1 and 3.2 of this Agreement.

## **VI. SUBCONTRACTING**

6.1 Any other clause of this Agreement to the contrary notwithstanding, none of the work or services covered by this Agreement shall be subcontracted without such prior written approval of City, and, unless specific written waiver is granted by City, such subcontracted work shall be subject by its terms to all provisions of this Agreement. In the event City agrees to such subcontracting compliance by subcontractors with this Agreement shall be Contractor's responsibility.

## **VII. ASSIGNABILITY**

7.1 Contractor shall not assign any interest in this Agreement to any other party without the prior written consent of City, as evidenced by passage of an ordinance.

## **VIII. CONFLICT OF INTEREST**

8.1 Contractor acknowledges and understands 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 City or any City agency such as City-owned utilities. Contractor understands that an officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent; child or spouse; a business entity in which he 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; or 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.

8.2 Contractor warrants and certifies that it, its officers, employees and agents are neither officers nor employees of the City, as defined in Part B, Section 10 of the City's Ethics Code. Furthermore, Contractor represents and warrants that it has tendered to City a Disclosure Statement, in compliance with the City's Ethics Ordinance.

8.3 Contractor acknowledges that, from time to time, City releases Request for Proposals or other solicitations. Contractor agrees that, to the extent practicable, in the

event it chooses to submit a proposal in response to any such City solicitations, it will notify City, in writing, of said submittal.

8.4 In the event that Contractor is involved in any other project or engagement with City, Contractor shall ensure that such work does not jeopardize Contractor's independence in performing the work specified in this Agreement and shall provide the City with a written explanation evidencing Contractor's independence, including any steps taken by Contractor to ensure such independence.

## **IX. COMPLIANCE**

9.1 Contractor shall comply with any and all professional standards promulgated by any authoritative body, as applicable to the services provided hereunder, while in the performance of such services.

9.2 Contractor shall comply with all federal, state and local laws, rules and regulations, if any, applicable to the services provided hereunder.

## **X. INSURANCE**

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "Payroll and Related Services for Administrative Assistants of the Mayor and City Council" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's signature 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. 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 renewal, and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do



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

TYPE	AMOUNT
1. Commercial General (Public) Liability Insurance, to include coverage for the following: a. Premises operations b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000.00 per occurrence: \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

TYPE	AMOUNT
2. Professional Liability (Claims Made Form)	\$1,000,000.00 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 acts, malpractice, error or omission in professional services.
3. Crime Coverage, to include the following: a. Broad Form Money – Inside b. Broad Form Money – Outside c. Employee Dishonesty d. Forgery and Alteration e. Depositor's Forgery f. Arson Conviction Reward	\$10,000.00 \$10,000.00 \$25,000.00 \$ 2,500.00 \$ 2,500.00 \$ 5,000.00

104. 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 Consultant and City as additional insureds. Consultant shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

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

deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of San Antonio  
Attn: Chris Callanen, Assistant to City Council  
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 insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability 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 and employers' 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 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 Consultant'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 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 no claim or cause of 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. INDEMNITY**

**11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARLESS, 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 CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. 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. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such**

defense without relieving CONTRACTOR of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage.

11.2 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.

11.3 Contractor shall advise the City, in writing, within twenty-four (24) hours 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.

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

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

## **XII. INDEPENDENT CONTRACTOR**

12.1 It is expressly understood and agreed that the Contractor provides services as an independent contractor, responsible for its respective acts or omissions, and that City

shall in no way be responsible therefore. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

### **XIII. CHANGES AND AMENDMENTS**

13.1 Any alterations, additions or deletions to the terms hereof shall be affected by written amendment executed by both parties, subject to the approval of City Council when required.

13.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated herein, without written amendment, and shall become a part hereof, as of the effective date of the rule, regulation or law.

### **XIV. LICENSES/CERTIFICATIONS**

14.1 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, if any, as applicable to the services provided herein.

### **XV. SEVERABILITY**

15.1 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 it is the intention of the parties 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 hereof, 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.

### **XVI. NOTICES**

16.1 Unless otherwise specified to the contrary herein, all official communications and notices required or permitted by this Agreement shall be deemed sufficient if in writing and mailed, certified mail, postage prepaid, to the addresses set forth below:

**CITY:**  
**City of San Antonio**  
**Office of Mayor and City Council**  
**Attn: Chris Callanen, Assistant to City Council**

**P. O. Box 839966  
San Antonio, Texas 78283-3966**

**CONTRACTOR:  
Soria, Inc.  
Corporate Payroll Administrators, Inc.  
C/O Guillermo Soria  
8434 Fountain Circle  
San Antonio, Texas 78229**

#### **XVII. LAW APPLICABLE**

17.1 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. 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, County of Bexar, Texas.

#### **XVIII. LEGAL AUTHORITY**

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

#### **XIX. PARTIES BOUND**

19.1 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, except as otherwise expressly provided for herein.

#### **XX. GENDER**

20.1 Words of either gender used in this Agreement shall be held and construed to include the other gender.

#### **XXI. CAPTIONS**

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

#### **XXII. CONFIDENTIALITY**

22.1 Contractor acknowledges that, during the term of this Agreement, it may have access to confidential information. As such, Contractor shall establish a method to secure the confidentiality of such records and other information, in accordance with applicable laws, regulations and rules.

**XXIII. ENTIRE AGREEMENT**

23.1 This Agreement, together with its authorizing ordinance, constitutes the final and entire agreement between the parties hereto and contains 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 is in writing, dated subsequent hereto and duly executed by the parties.

**EXECUTED and AGREED** to be effective October 1, 2016.

**CITY OF SAN ANTONIO**

**SORIA, INC.  
CORPORATE PAYROLL ADMINISTRATORS, INC.**

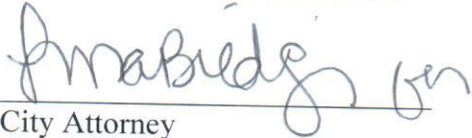


Sheryl Sculley  
City Manager



Guillermo Soria  
Owner

**APPROVED AS TO FORM:**



City Attorney