

ORDINANCE 2018-06-21-0502

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH THE SEGAL COMPANY (WESTERN STATES) INC., DBA SEGAL WATERS CONSULTING FOR THE DEVELOPMENT OF EVALUATIONS AND COMPENSATION REVIEW OF EXECUTIVES APPOINTED BY THE MAYOR AND CITY COUNCIL FOR A TERM OF THREE YEARS WITH TWO OPTIONAL ONE YEAR RENEWALS FOR AN AMOUNT NOT TO EXCEED \$279,500.00.

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WHEREAS, the City wishes to enter into a Professional Services Agreement with Segal Company, Inc. to provide executive evaluation and compensation consultant services for a three year term with two optional one year renewal periods for an amount not to exceed \$279,500.00; and

WHEREAS, the City of San Antonio solicited proposals to develop the executive evaluation and compensation consultant services for executives appointed by the Mayor and City Council and a formal review was conducted; and

WHEREAS, as a result of the review process, staff recommends that Segal Company, 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 Segal Company, Inc. to provide executive evaluation and compensation consultant services beginning June 15, 2018, and ending June 15, 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 \$65,000.00 for this Ordinance is available in Fund 11001000 and Cost Center 8002060001 and General Ledger 5201040 as part of the Fiscal Year 2018 Budget.

SECTION 3. The amount is not to exceed the budgeted amount and will be encumbered upon issuance of a purchase order, and payment is authorized to The Segal Company (Western States) Inc., dba Segal Waters Consulting. 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.

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.

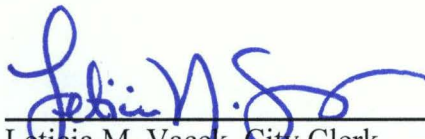
PASSED AND APPROVED this 21st day of June, 2018.



M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

6 

Leticia M. Vacek, City Clerk



Andrew Segovia, City Attorney

Agenda Item:	45						
Date:	06/21/2018						
Time:	02:56:04 PM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a professional services agreement with The Segal Company (Western States) Inc., dba Segal Waters Consulting for the development of evaluations and compensation review of executives appointed by the Mayor and City Council for the initial term of three years for an amount not to exceed \$279,500.00 with two optional, one year renewals. [Ben Gorzell, Chief Financial Officer; Lori Steward, Director, Human Resources]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Greg Brockhouse	District 6		x			x	
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

KC
6/21/18
Item No. 45

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 The Segal Company Inc. (Western States) d/b/a/ Segal Waters Consulting, having its principal place of business at 5057 Keller Springs Rd, Suite 110, Addison, Texas (hereinafter referred to as "CONSULTANT").

I. PURPOSE

1.1 The purpose of this CONTRACT is to state the terms and conditions under which the CONSULTANT shall provide evaluation and compensation consulting services.

II. SCOPE OF SERVICES

2.1 The CONSULTANT shall work with the City of San Antonio, and with appropriate CITY officials to perform any and all related tasks required by the CITY in order to fulfill the purposes of this CONTRACT. The CONSULTANT agrees that Linda Wishard will be CONSULTANT'S point of contact for the services to be performed under this CONTRACT. The CITY is an Equal Opportunity Employer and does not discriminate. CONSULTANT shall conduct all activities in accordance with this and all other applicable federal, state and local requirements.

2.2 CONSULTANT shall provide the following services:

2.2.1 Project Initiation

2.2.1 (a) Conduct initial meeting

2.2.1 (b) Confirm the goals and objectives

2.2.1 (c) Discuss the City's current evaluation, compensation and classification structures, as well as the reasons for this project

2.2.1 (d) Finalize the timeline and specific dates for deliverables

2.2.1 (e) Clarify CONSULTANT and CITY'S roles in each project phase

2.2.1 (f) Establish parameters and protocols for keeping the Project Team updated and informed

2.2.1 (g) Identify data or information needed to support the overall assignment

2.2.1 (h) Conduct stakeholder interviews and meetings to include the Mayor and City Council, members of the City Council Governance Committee, members of the Municipal Court Advisory Committee, relevant City staff and any relevant stakeholders requested by City Council.

2.2.1 (i) A total of 10 days of on-site meetings detailed for year 1 as follows:

- Initial project meeting (1)
- Evaluation development project team meeting (1) • Evaluation training meeting (1) • Final recommendations presentation meeting (1) • Additional meeting/training days (6)

Meeting topics may be adjusted based on need and any days in excess of 10 for contingent additional services will be subject to pricing schedule in Section V.

2.2.2 Evaluation Development

2.2.2 (a) Develop an annual performance evaluation process and metrics for the positions of City Manager, City Internal Auditor, City Clerk and Presiding Judge of the Municipal Court.

2.2.2 (b) Identify and develop specific performance measures and goals for each position that reflect organizational goals

2.2.2 (c) Develop appropriate benchmarks to measure performance, permitting third-party validation for quantitative measures as applicable

2.2.2 (d) Develop performance evaluation tools and process to include a performance management strategy and customized performance appraisal tool involving City Council members, relevant City staff and key stakeholders

2.2.2 (e) Develop final report with recommended performance pay strategy and tools to be presented to Mayor and City Council and relevant City staff

2.2.2 (f) Communicate and train Mayor and City Council and relevant City staff on the new performance evaluation system to include a manual that provides guidance and tips for documenting and evaluating employee performance, instructions, and a PowerPoint presentation

2.2.2 (g) Each annual performance review will include collection and validation of qualitative and quantitative metrics, facilitation of the completion of each position performance appraisal with a report back to Mayor and City Council of the results with proposed annual pay increases and incentive awards

2.2.2 (h) Each position performance appraisal will be reviewed annually in collaboration with Mayor and City Council as relevant for the next year in anticipation of modified performance measures, goals and objectives

2.2.3. Compensation Review

2.2.3(a) Conduct a compensation review for the positions of City Manager, City Internal Auditor, City Clerk and Presiding Judge of the Municipal Court

2.2.3(b) Develop a study methodology with custom-designed survey to include identification of comparable employers to survey, with consideration given to national market, local market and position comparisons

2.2.3 (c) Collect market data to include actual salaries, base pay ranges with minimum and maximum annual pay rates, total remuneration and incentive pay

2.2.3 (d) Analyze market data to include current and proposed compensation for the positions and provide recommendation of range of salary placement annually and additional adjustments as appropriate .

2.2.3(e) Identify levels of performance accomplishment that warrant reward payouts

2.2.3(f) Develop and recommend market supported structures and levels of pay for reward payouts

2.2.3(g) Prepare a report of findings to include: An executive summary, briefly describing key findings; a description of the study objective and methodology; the City's competitive benchmark positions for pay, applicable to each job title, including incentive pay; and appendices showing detailed information collected for the market study.

2.2.4 Present final results of evaluation development and compensation review to the City including: background and reasons for the project; objectives and goals of the project; methodology used to conduct analysis; key findings and outcomes; and recommendations, including potential implications of those recommendations.

2.3 CONSULTANT 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 CONSULANT acknowledges that the services listed below are identified as additional services the CITY may request CONSULTANT to provide. If requested, CONSULTANT 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 CONSULTANT. Within said request, the Director of Human Resources shall state the scope of services CONSULTANT 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 CONSULTANT.

The following services are herein designated as contingent additional services:

Tasks not included in the current scope that are related to performance management and compensation; Training; On-site Meetings in addition to the ten (10) meetings included in Scope Section 2.2.1 (i)

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 CONSULTANT. CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance of services or payment of fees. Any references in this 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, CONSULTANT 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, CONSULTANT shall remain liable for completion of the services outlined in this Contract in the event of default by the successor CONSULTANT, 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 CONSULTANT 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 Consultant 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 Consultant shall in no event release CONSULTANT from any obligation under the terms of this Contract, nor shall it relieve or release CONSULTANT 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 June 14, 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 CONSULTANT, CITY shall pay a total cost not to exceed an amount of \$279,500.00 CITY shall pay the professional fee up to the annual amount listed below upon receipt of invoices detailing services by day, hours and staff. Payment will be made on an annual basis at the conclusion of services.

Year 1	Year 2	Year 3	Year 4 (option)	Year 5 (option)
\$65,000.00	\$49,875.00	\$52,250.00	\$54,875.00	\$57,500.00

*Contingent Additional Service(s) Trainings or On-site Meetings, if requested, will be conducted at a fixed, daily rate of \$3,500.00. The daily rate includes travel expenses, assumes an 8 hour work day, no limit to the number of meetings held over the course of the day and services provided by senior Vice President level consultant.

*Hourly rates, if selected for contingent additional services, exclude travel expenses and are as follows:

Staff Member	Title/Role	2018 Standard Hourly Rate
Elliot R. Susseles	Senior Vice President, Practice Leader	\$475
Ruth Ann Eledge	Vice President, Senior Consultant, Project Manager	\$385
Linda G. Wishard	Vice President, Senior Consultant, Project Manager	\$385
Cristy Reetz	Associate Consultant	\$310
Melinda Castellon	Senior Associate	\$275
Holly Waggoner	Senior Associate	\$275
Fredericka Ogbazi	Associate	\$225

This fee shall constitute full and complete payment for all services to be performed by CONSULTANT under this CONTRACT. The pricing above includes all professional, analytic, and administrative services, as well as expenses associated with materials, supplies, overhead, and travel. Air fare CONSULTANT uses shall be economy or coach class. No administration or overhead fees may be charged. CONSULTANT shall submit a request for reimbursement with detailed invoice to the Director for all additional travel expenses incurred when and if the hourly rate option is selected. Air fare shall be reimbursed only for economy or coach class. Mileage shall be reimbursed at the rate of 54.5 cents per mile or as updated and published by the IRS. CONSULTANT shall only be entitled to compensation of the actual amount of each expense incurred. CONSULTANT shall submit a request for reimbursement to the Director for hourly rate on-site meeting travel expenses incurred. The request shall include documentation of the type and amount of each expense for which reimbursement is requested.

5.2 CITY shall not be obligated or liable under this CONTRACT to any party, other than CONSULTANT 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 CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY.

6.2 The CONSULTANT shall establish a method to secure the confidentiality of records and information that the CONSULTANT 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 CONSULTANT receives inquiries regarding documents within their possession pursuant to this CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 All reports, information and other data given to, prepared or assembled by the CONSULTANT under this CONTRACT, and any other related documents or items shall become the sole property of the CITY. Such reports, information and other data shall be delivered at no cost to the CITY upon request or termination of this CONTRACT without restriction on future use. The CONSULTANT may make copies of any and all documents for its files, at its sole cost and expense.
- 7.2 The CONSULTANT shall retain all records owned by or to which the CITY has access to, for the retention periods set forth in the Texas Local Government Records Act.

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.

rx. INSURANCE REOUIREMENTS

- 9.1 A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Risk Department, which shall be clearly labeled "Executive Compensation and Evaluation Service" 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 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: .

TYPE	AMOUNTS
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$ 1 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. Commercial Crime/Employee Dishonesty Or Fidelity Bond in same amount)	\$ 1,000,000 per occurrence
3. 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) 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.

E) 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: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name 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.

G) Within five (5) 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.

H) In addition to any other remedies the 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, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

I) 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.

J) It is agreed that Contractor'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.

K) 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..

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

M) The City will in no event be responsible for injury claims from the sub-contractors while performing work on City premises.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT's activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, contractor or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

XI. INDEPENDENT CONTRACTOR

11.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons

performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Contract and that the Consultant 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 CONSULTANT 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 CONSULTANT'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 CONSULTANT 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 CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT 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 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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 CONSULTANT 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. CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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
Recruitment Division
111 Soledad
San Antonio, Texas 78205

CONSULTANT

The Segal Company, Inc.
5057 Keller Springs Road, Suite 110
Addison, Texas 75001

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 and CONSULTANT'S Proposal are part of this contract and are attached as Exhibit A and B. The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of CITY'S Request for Proposal, CONSULTANT'S Proposal and the terms of this CONTRACT; CITY'S Request for Proposal shall control where it conflicts with CONSULTANT'S Proposal.

XIX. LEGAL AUTHORITY

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

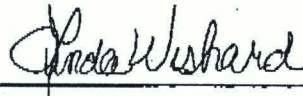
22.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

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

CITY OF SAN ANTONIO, TEXAS

THE SEGAL COMPANY, INC.

Ben Gorzell, Jr., CPA
Chief Financial Officer



Linda Wishard
Vice President

Date:

Date: 6/4/2018

Approved as to form:

Krista Cover
Assistant City Attorney