

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF SAN ANTONIO
AND
PRE-EMPLOY.COM**

This contract is made and entered into by and between the City of San Antonio (CITY) and Pre-employ.com (CONSULTANT) in order that CONSULTANT provide CITY with criminal background checks.

I. TERM

- 1.1 The term of this Agreement shall commence on January 1, 2017 and terminate on December 31, 2019 with two (2) additional one (1) year extensions at option of CITY.

II. SCOPE OF SERVICES

- 2.0 SERVICES OFFERED BY CONTRACTOR. CONTRACTOR/Pre-employ.com, Inc. is a "consumer reporting agency" and a "reseller of consumer reporting services" as such terms are defined in the Fair Credit Reporting Act ("FCRA"). Upon request and as allowed by applicable law, CONTRACTOR will provide consumer reports and/or investigative consumer reports (collectively, "Reports") to CITY/END-USER. CONTRACTOR will only furnish Reports to End-User for a permissible purpose under the FCRA and for no other purpose. In addition to providing Reports to End-User, CONTRACTOR shall, upon request and as permitted by applicable law, provide certain other business-related services to End-User (collectively, the "Services").

END-USER AGREEMENT. The End-User Agreement is required in addition to, and must be executed for this Professional Services Agreement to take effect. The End-User Agreement addresses FCRA, state, municipal, service and consumer guidelines required for the Parties to be in agreement and consent to all applicable obligations. Each party is responsible for adhering to changing requirements of those required by applicable law, including the FCRA. All terms further addressed in this agreement are subject to the terms of the End-User Agreement first and foremost.

FEDERAL NOTICES RECEIVED. End-User hereby acknowledges that it has received as a part of this agreement, a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" and "Notice to Users of Consumer Reports."

- 2.1 CONTRACTOR will provide a reliable, trustworthy and comprehensive criminal record check system. The system will be capable of checking local, state and federal courts in all fifty states. Additionally, CONTRACTOR will perform international checks for certain employees when requested. CONTRACTOR must agree to use its best and utmost efforts to secure correct and complete background checks as follows:

- 2.2 The checks will cover misdemeanors and felonies or crimes of similar gravity with varying names or designations. The checks will cover convictions and charges as appropriate.
- 2.3 The checks will be done by the home residence(s) of the candidate and will cover a minimum of seven (7) years or the time since the employee became eighteen (18) years of age, whichever is shorter.
- 2.4 Prior to background check, the candidate will accept an offer of conditional employment and will complete a consent form which meets all legal requirements, to be provided by the City during pre-employment processing.
- 2.5 When a check is requested, the candidate will provide the following information on the release form provided by the City during pre-employment processing: full name and all previous names; Social Security Number; date of birth; Race; Sex; residence history including all addresses and all counties and states where the candidate has lived during the prior 7 years; and all current drivers' license numbers with state of issuance.
- 2.6 CONTRACTOR must be able to provide several levels of secure access to City users, to include access for entry only with results being sent to designated City representative as well as higher level access to include viewing all results.
- 2.7 CONTRACTOR will provide capability for self-entry by a candidate, volunteer or designated department representative on-line to initiate the release form and background check, but not display results or any confidential information.
- 2.8 A request for a background check will be entered through self-entry or by the City via a secure online connection to the CONTRACTOR and will include the information listed above in 2.5. The CONTRACTOR will make results available electronically to the designated City official.
- 2.9 The CONTRACTOR will provide an explanation, upon request, for all jargon or acronyms used in the checks to each institution requesting checks.
- 2.10 A standard background check will include national and international repositories and criminal database search. Upon request by the City, the CONTRACTOR will also provide the following checks: Social Security Address Locator Investigative Tool, County & State Criminal Record, federal, credit check, credentials verification (professional and educational), and driving record (DOT).
- 2.11 CONTRACTOR will receive requests electronically and must transmit the results of checks electronically. Candidates should have the ability to electronically see the results of their background checks, when requested.
- 2.12 CONTRACTOR must receive and return the request form check electronically on-line within two, (2) minutes, provided that for multi-state checks and for international

checks, the time for response may be extended for a reasonable time. In situations where a particular background check will need a reasonable extension, the CONTRACTOR will communicate any delay in writing, and provide a response time estimate.

- 2.13 CONTRACTOR must use an alternative method for receiving requests and securely transmitting the results in the timelines specified in 2.12 if the website is down or inaccessible.
- 2.14 CONTRACTOR will abide by all applicable state and federal laws, regulations and rules including but not limited to the Fair Credit Reporting Act.
- 2.15 CONTRACTOR must agree to maintain all requests and results confidentially and securely, and to abide by all relevant federal and state laws governing the privacy of this information. The contractor also must agree to provide copies of all requests and results for the life of this contract and for a five-year period following the termination of this agreement.
- 2.16 CONTRACTOR will provide training, guidance regarding applicable laws, compliance with the Fair Credit Reporting Act, and sample communication for City administrators during first year of the Contract term and ongoing for legal updates or as requested by CITY due to new employees needing training on system subject to the understanding of No Legal Advice/Counsel of Section 12 of End-User Agreement.
- 2.17 CONTRACTOR will allow CITY to generate reports through CONTRACTOR web portal regarding background check requests, including total number of background checks and average turnaround times.
- 2.18 CONTRACTOR will certify that criminal records, credit reports, sex offender status, driving record, etc. can be obtained for each state.
- 2.19 CONTRACTOR must have a formal record retention policy.

III. PAYMENT AND BILLING

- 3.1 CITY shall pay CONSULTANT for services conducted as follows:

A – Price per background check for up to seven years.

Standard Check	\$1.95
International Check	\$24.95 + Country Access Fee
Federal Check	\$4.95
Social Security Check	\$.40
County Criminal Record Check	\$6.95
State Criminal Record Check	\$4.95
Driving Record Check (DOT)	\$2.95
Credit Check	\$7.95
Education Verification	\$7.95
Employment Verification	\$7.95

***Consistent with industry best practices and applicable laws, all criminal records found in large databases, such as the “U.S. Criminal database”, will be re-verified at \$6.95 re-verification cost in addition to standard cost of \$1.95 for any searches that reflect potential criminal history.**

B – Price per Month for up to 600 standard background checks for up to seven years.

Standard Check Monthly Cost	\$1,170.00
Cost per background check above 600 for month.	\$0.95

*** Consistent with industry best practices and applicable laws, all criminal records found in large databases, such as the “U.S. Criminal database”, will be re-verified at \$6.95 re-verification cost in addition to standard cost of \$1.95 for any searches that reflect potential criminal history. Charges for re-verification will be reflected separately on the City’s invoice.**

***County re-verifications would be at \$6.95. No other additional county fees will be charged except for Maine, Montana, New Hampshire, and New York.**

***The prices listed above only reflect the rate charged for searching for one name in one state, county or federal jurisdiction. An additional charge will be made for each additional name searched and each additional county searched except that county fees will not be added except for Maine, Montana, New Hampshire and New York. Unless otherwise specified by CITY, Pre-Employ will search for all names and counties provided by the job applicant, as well as all names and counties that are encountered in other searches performed by Pre-employ regarding the applicant.**

- 3.2 Upon completion of a criminal history search, CONSULTANT shall submit an itemized invoice to CITY for the services provided to CITY. Said invoice shall be submitted within thirty days of the completion of a criminal history search, except as provided for by Article VII of this contract. The invoice shall contain a representation that the services being invoiced were provided pursuant to this contract.
- 3.3 Upon receipt of and approval by CITY of CONSULTANT's invoice, CITY agrees to pay CONSULTANT the amount invoiced, so long as the amount invoiced has been invoiced pursuant to the provisions of this contract.
- 3.4 CITY shall not be obligated or liable under this contract to any party other than CONSULTANT for payment of any monies or provision of any goods or services.
- 3.5 CONSULTANT shall be responsible for all expenses incurred by CONSULTANT in completing the work required by this contract.

IV. LICENSES AND CERTIFICATIONS

- 4.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by CONSULTANT. Failure to comply with this

requirement shall be treated as a default and will result in termination of this contract.

V. RESERVED

VI. RESERVED

VII. TERMINATION

- 7.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term as set out in Article I or earlier termination pursuant to any of the provisions of this contract.
- 7.2 CITY may terminate this contract in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to CONSULTANT. Said notice shall specify the date of termination.
- 7.3 In no event shall CITY's action of terminating this contract be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.
- 7.4 If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this contract shall automatically terminate as of the effective date of such prohibition.
- 7.5 Should this contract be terminated prior to completion of the work identified in Article II, CONSULTANT shall, within five business days of the effective date of termination, 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.

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. 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. INDEPENDENT CONTRACTOR

- 9.1 CONSULTANT covenants and agrees that CONSULTANT 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 venture between CITY and CONSULTANT. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONSULTANT under this agreement and that the CONSULTANT has no authority to bind the CITY.

- 9.2 Regardless of where the work shall be performed, what supplies or resources are provided by CITY, what instruction or direction is provided by CITY, CONSULTANT and those persons designated by it to provide services shall not be deemed employees of CITY and shall not be entitled to wages or benefits from CITY, other than the compensation provided herein.

X. SUBCONTRACTING AND ASSIGNMENT

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by 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.
- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of CONSULTANT, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or after the termination of this contract.
- 10.3 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 by any other means, without the written consent of 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, assignee, transferee, or subcontractor.
- 10.4 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 or all 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, 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.

XI. CONFLICT OF INTEREST

- 11.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and CITY's Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. 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 services, if any of the following individuals 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 percent or more of the voting stock or shares of the business entity, or ten 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.
- 11.2 Pursuant to the subsection above, 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 CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a discretionary contracts disclosure statement in compliance with CITY's Ethics Code.

XII. INDEMNITY

- 12.1 **CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN**

INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 12.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONSULTANT SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

XIII. RESERVED

XIV. CHANGES AND AMENDMENTS

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT.
- 14.2 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 contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XV. ENTIRE AGREEMENT

- 15.1 This contract and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

XVI. SEVERABILITY

- 16.1 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 a 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.

XVII. NOTICES

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY
Human Resources Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

CONSULTANT
Robert V. Mather, CEO
Pre-employ.com
2301 Balls Ferry Rd
Anderson, California 96001

XVIII. LAW APPLICABLE

- 18.1 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.
- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

XIX. LEGAL AUTHORITY

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

XX. PARTIES BOUND

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

XXI. GENDER

- 21.1 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 to include the plural, unless the context otherwise requires.

XXII. CAPTIONS

- 22.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

EXECUTED IN DUPLICATE ORIGINALS ON _____, 2016.

CITY OF SAN ANTONIO

PRE-EMPLOY.COM

Ben Gorzell
Chief Financial Officer

Robert Mather
Robert Mather
Chief Executive Officer

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney