

AN ORDINANCE 2017-05-18-0349

**AUTHORIZING A PROFESSIONAL SERVICES  
CONTRACT WITH KELMAR GLOBAL IN THE  
AMOUNT OF \$300,000.00 TO PROVIDE THE SAN  
ANTONIO POLICE DEPARTMENT WITH  
BACKGROUND INVESTIGATIONS OF POLICE  
COMMUNICATION APPLICANTS.**

\* \* \* \*

**WHEREAS**, a five person Evaluation Committee consisting of personnel from Police and Human Resources Departments evaluated the proposals; and

**WHEREAS**, three (3) responsive proposals were reviewed; and

**WHEREAS**, the criteria used to evaluate the responses included experience, background and qualifications, proposed plans, price schedule; Local Preference; and Veteran-Owned Small Business Preference; and

**WHEREAS**, as a result of the RFP process, the staff recommends that Kelmar Global be awarded the contract to provide services; and

**WHEREAS**, said Contract provides for an initial 4-year term, beginning May 18th, 2017, with two (2), one (1) year options to renew; and

**WHEREAS**, the estimated total cost of this contract is \$300,000; **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 contract with to provide background check services for . The contract shall be executed for an initial four (4) year term, beginning May 18, 2017, and ending May 18, 2021, and includes an option for the City to extend the contract for two (2) one (1) year periods, subject to subsequent funding and approval by City Council. A copy of the contract, in substantially 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 \$60,000.00 for this ordinance is available in Fund 11001000, Cost Center 1706030001 and General Ledger 5201040 as part of the Fiscal Year 2017 Budget and subsequent budgets that fall within the term period of this contract approved by City Council.

**SECTION 3:** Payment not to exceed the budgeted amount is authorized to Kelmar Global and should be encumbered with a purchase order.

**SECTION 4:** Additional funding for this ordinance is contingent upon City Council approval of the City's operating budget and the availability of funds for Fiscal Years 2018, 2019, 2020, 2021 and 2022.

**SECTION 5:** 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 6.** This ordinance is effective immediately upon passage by eight affirmative votes; otherwise, it is effective on the tenth day after passage.

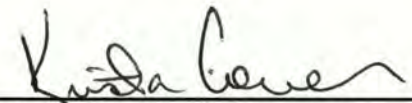
**PASSED AND APPROVED this 18th day of May, 2017.**



**M A Y O R**  
Ivy R. Taylor

**ATTEST:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk  
for \_\_\_\_\_  
Andrew Segovia, City Attorney



<b>Agenda Item:</b>	<b>22 ( in consent vote: 5, 6, 7, 8, 9, 11, 13, 14, 15A, 15B, 17, 19, 21, 22, 23, 24, 25A, 25B, 25C )</b>						
<b>Date:</b>	05/18/2017						
<b>Time:</b>	09:21:19 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a contract with Kelmar Global in the amount of \$300,000.00 to provide the San Antonio Police Department with background investigations of Police Communication applicants. [Erik Walsh, Deputy City Manager; William McManus, Chief of Police]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x			x	

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
CITY OF SAN ANTONIO  
AND  
KELMAR GLOBAL**

This contract is entered into by and between the CITY OF SAN ANTONIO POLICE DEPARTMENT (hereinafter referred to as "CITY"), and KELMAR GLOBAL (hereinafter referred to as "VENDOR") in order that VENDOR provide CITY with background investigations for SAPD Telecommunicator applicants.

**I. TERM**

- 1.1 The term of this Agreement shall commence on May 18, 2017 and terminate on May 18, 2021. The CITY shall have the option to renew for an additional one (1), two (2) year period. Renewal shall be in writing and signed by the Chief of Police or his designee, without the need for further council action provided funds are allocated.

**II. SCOPE OF SERVICES**

- 2.1 VENDOR acknowledges and agrees that it has no exclusive right to provide the services contemplated by this contract to CITY. At any time and without notice to VENDOR, CITY may contract with another party to provide said services. The fact that CITY does so, however, does not relieve VENDOR of its obligations under this contract.
- 2.2 During the term of this contract, VENDOR shall, at the request of CITY, conduct TCOLE compliant background checks of specified applicants to include the following:
- a. Provide a reliable background investigation which abides by the Fair Credit Reporting Act ("FCRA"). VENDOR must agree to use best efforts to secure correct and complete background investigations;
  - b. Must be able to receive requests from authorized employees by secure fax and hand to hand delivery to authorized representatives identified to VENDOR only at Public Safety Answering Point ("PSAP") 8039 Challenger Drive, Brooks City Base with option to receive electronically;
  - c. Conduct a thorough review and confirmation of the applicant's statements of fact within the Personal History Statement ("PHS");
  - d. Review the applicant's social media activity when applicable;
  - e. Contact personal references and document with detailed notes and/or corroborating information obtained as a result of the contact;
  - f. Confirm the work history outlined by the applicant;



- g. Document any discrepancies found through the investigatory process;
  - h. Contact the applicant spouses, significant others, and any persons with knowledge of the applicant's personal character or other relevant facts assisting the Department with determining suitability for Telecommunicator licensing within a police agency;
  - i. Provide a summary report of all findings and supporting documentation upon completion of the investigations to be forwarded to the Department for final review. SAPD will make a determination of the applicant's suitability for employment within 14 calendar days after delivery of the investigatory packets;
  - j. Be able to meet or exceed recommended industry data security guidelines for secure transmissions of Personally Identifiable Information;
  - k. Comply with all applicable federal, state, and local laws in the course of completing the background check.
  - l. Must comply with Texas record retention and maintain all requests for background checks and results for the life of the contract plus five years;
  - m. Must maintain all requests and results in secure and confidential location;
  - n. Provide training, including in person if requested, to CITY personnel on background check process as needed
- 2.3 VENDOR shall provide the requested search results immediately upon request.
- 2.4 VENDOR shall use the best means and efforts in conducting the searches requested by CITY. CITY agrees that VENDOR will have no obligation or liability to CITY for any delay or failure of VENDOR's network due to circumstances beyond VENDOR's control.
- 2.5 CITY agrees that it will not use the information provided by VENDOR in any way that violates local, state, or federal law, rule, or regulation.

### **III. PAYMENT AND BILLING**

- 3.1 Upon completion of a background investigation requested pursuant to Article 2 of this contract, CITY shall pay VENDOR in a total amount not to exceed \$300,000.00 as follows:

#### **Pricing per Report**

Year 1 \$395  
Year 2 \$395  
Year 3 \$425  
Year 4 \$425  
Year 5 \$450  
Year 6 \$450



- 3.2 Upon completion of the background check executed in compliance with TCOLE requirements, VENDOR shall submit an itemized invoice to CITY for the services provided to CITY. Said invoice shall be submitted within 15 days of service. Subsequent background checks shall be conducted and completed within 14 business days of receipt of request. 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 VENDOR's invoice, CITY agrees to pay VENDOR 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 VENDOR for payment of any monies or provision of any goods or services.
- 3.5 VENDOR shall be responsible for all expenses incurred by VENDOR 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 VENDOR. 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 or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination by Notice. This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.
- 7.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the



receipt of the notice by the defaulting party.

- 7.4 **Termination by Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 7.5 **Effect of Termination.** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from VENDOR to CITY or to such person(s) or firm(s) as the CITY may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at VENDOR'S sole cost and expense. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient on the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within 30 calendar days after the effective termination date.
- 7.6 Upon termination or cancellation of this CONTRACT, CITY may immediately commence audit of VENDOR'S books, accounts, and records. Within 30 calendar days after being notified by CITY of the results of said audit, VENDOR shall pay CITY any amount shown by said audit to be owed CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 7.7 If CITY conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between VENDOR and CITY. The results from said third audit shall be final.

#### **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 **VENDOR covenants and agrees that VENDOR is an independent contractor and not an officer, agent, servant, or employee of City; that VENDOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and VENDORS; that the doctrine of VENDOR superior shall not apply as between CITY and VENDOR, its officers, agents, employees, contractors, subcontractors, and VENDORS, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint venturers between CITY and VENDOR. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the VENDOR under this agreement and that the VENDOR 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, VENDOR 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 VENDOR.**
- 10.2 **Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of VENDOR, 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, VENDOR may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted, VENDOR shall remain liable for completion of the services outlined in this contract in the event of default by the successor, 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 VENDOR 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 VENDOR shall thereupon cease and terminate,**



notwithstanding any other remedy available to CITY under this contract. The violation of this provision by VENDOR shall in no event release VENDOR from any obligation under the terms of this contract, nor shall it relieve or release VENDOR from the payment of any damages to CITY, which CITY sustains as a result of such violation.

## **XI. CONFLICT OF INTEREST**

- 11.1 VENDOR 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, VENDOR warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. VENDOR 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 VENDOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO VENDOR'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF VENDOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, VENDOR OR SUBCONTRACTOR OF VENDOR, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE



**EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO 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. VENDOR SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR VENDOR KNOWN TO VENDOR RELATED TO OR ARISING OUT OF VENDOR'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT VENDOR'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING VENDOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

### **XIII. INSURANCE**

**A) Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "Background Investigations for SAPD Telecommunicators" 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 Human Resources 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 Respondent's financial integrity is of interest to the City; therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent'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:

<b>TYPE</b>	<b>AMOUNTS</b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$2,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Commercial Crime/Employee Dishonesty (Or Fidelity Bond in same amount)	\$2,000,000 per occurrence
6. 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.	\$5,000,000 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) Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Respondent. 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. Respondent shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Respondent shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: San Antonio Police Department



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

F) Respondent 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, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent'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 Respondent'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 Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.

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

J) It is agreed that Respondent'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) Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.



#### **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 VENDOR.
- 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. EXHIBITS**

- 16.1 VENDOR understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

CITY's Request for Proposal  
VENDOR'S Proposal

Exhibit A  
Exhibit B

- 16.2 VENDOR understands and agrees that Exhibits A and B are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by VENDOR as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

#### **XVII. SEVERABILITY**

- 17.1 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.

#### **XVIII. NOTICES**

- 18.1 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**  
San Antonio Police Department  
315 S. Santa Rosa  
San Antonio, Texas 78207

**VENDOR**  
Kelmar Global  
2553 Jackson Keller, Suite 200  
San Antonio, Texas 78230

#### **XIX. LAW APPLICABLE AND FEES**

- 19.1 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.
- 19.2 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.
- 19.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

#### **XX. LEGAL AUTHORITY**

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

#### **XXI. PARTIES BOUND**

- 21.1 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.



## **XXII. GENDER**

- 22.1 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.

## **XXIII. CAPTIONS**

- 23.1 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.

## **XXIV. NONDISCRIMINATION**

- 24.1 Non-Discrimination. As a party to this contract, VENDOR understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

## **XXV. ACKNOWLEDGMENT**

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

EXECUTED ON \_\_\_\_\_, 2017.

**CITY**

\_\_\_\_\_  
Erik Walsh  
Deputy City Manager

**KELMAR GLOBAL**

\_\_\_\_\_  
Kelly E. Riddle  
President

**APPROVED AS TO FORM:**

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Krista Cover  
Assistant City Attorney