

AN ORDINANCE 2018-05-17-0357

AUTHORIZING AN AGREEMENT WITH MGT OF AMERICA CONSULTING, LLC. TO PROVIDE PREPARATION OF COST ALLOCATION PLANS AND INDIRECT COST RATE SERVICES FOR THE CITY OF SAN ANTONIO FINANCE DEPARTMENT, FOR A TOTAL AMOUNT NOT TO EXCEED \$183,250.00 FOR AN INITIAL TERM BEGINNING MAY 18, 2018 AND ENDING APRIL 30, 2021, WITH AN OPTION FOR TWO (2) ONE (1) YEAR RENEWAL TERMS.

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WHEREAS, a Request For Proposals ("RFP") seeking proposals for preparation of cost allocation plans and indirect cost rate services was issued by City Staff on March 27, 2018; and

WHEREAS, on April 10, 2018, three proposals were received in response to the RFP; and

WHEREAS, an evaluation team comprised of various members of City Staff has evaluated the Proposals received and has recommended that the Proposal of MGT of America Consulting, LLC. be accepted, and that the City enter into an agreement with this company for an initial term of three (3) years beginning May 18, 2018 and ending April 30, 2021, with an option for two (2) one (1) year renewal terms, for an amount not to exceed \$183,250.00; and

WHEREAS, the City Council, upon consideration of and deliberation on such recommendation, desires to accept City Staff's recommendation; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of an agreement with MGT of America Consulting, LLC. that provides for preparation of cost allocation plans and indirect cost rate services for an initial term of three (3) years beginning May 18, 2018 and ending April 30, 2021, with an option for two (2) one (1) year renewal terms, for an amount not to exceed \$183,250.00, are hereby approved.

The City Manager, or her designee, or the Deputy Chief Financial Officer, or his designee, is hereby authorized to enter into and execute the agreement, under terms and conditions substantially in accordance with those set forth in **Attachment I** to this Ordinance.

SECTION 2. Funding in the amount of \$34,750.00 for this ordinance is available for Fund 11001000, Cost Center 0703010001 and General Ledger 5202020, as part of the Fiscal Year 2018 Budget.


SECTION 3. Future funding through the term of this agreement is contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 4. Payment not to exceed the budgeted amount is authorized to MGT of America Consulting, LLC. and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer ("CFO") or the Deputy Chief Financial Officer ("DCFO"), City of San Antonio. The CFO or the DCFO 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.

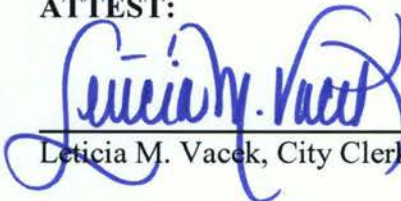
SECTION 6. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 17th day of May, 2018.




M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	17 (in consent vote: 6, 8A, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22)						
Date:	05/17/2018						
Time:	09:40:44 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a professional services agreement with MGT of America Consulting, LLC in amount not to exceed \$183,250.00 for the preparation of two City-wide cost allocation plans for a term through September 30, 2021 with an option to renew the contract for two additional one year terms upon approval from the Deputy Chief Financial Officer. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				

RKN
5/17/18
Item No. 17

A T T A C H M E N T I

COST ALLOCATION PLANS AND INDIRECT COST RATES CONTRACT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Contract is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas home-rule municipal corporation acting by and through its City Manager or her designee, pursuant to Ordinance No. 2018-_____ passed and approved on _____, and **MGT OF AMERICA CONSULTING, LLC** a limited liability company chartered under the laws of the State of Florida (hereinafter referred to as "**CONTRACTOR**").

WHEREAS, CITY incurs both direct and indirect costs in the performance of its responsibilities; and

WHEREAS, direct costs are costs that can be specifically or readily identified with a specific cost objective or program; while indirect costs are costs necessary for the effective and efficient operation of City programs, which cannot be directly assigned to one service, such as citywide central services and departmental administration and support; and

WHEREAS, CITY annually has a need for the preparation of two central services allocation plans:

- the Full-Cost Central Services Cost Allocation Plan, which is utilized to identify and recover central services costs from non-general fund sources other than grant funded programs; and
- the Uniform Guidance Central Services Cost Allocation Plan, which is utilized to identify and recover central services costs from programs funded by Federal and State funds; and

WHEREAS, CITY also annually prepares an Indirect Cost Rate Proposal, which is used in recovering indirect costs for each City department through the application of these rates, which are developed in accordance with Uniform Guidance; and

WHEREAS, CITY has gone through an extensive selection process and issued a Request For Proposal ("Request For Proposal") and through such process has chosen **CONTRACTOR** to provide the services described herein for a three year period to include the cost allocation plans and indirect cost rates for the fiscal years ending September 30, 2019, 2020, and 2021, with two (2) one (1) year options to extend the Contract, with Deputy Chief Financial Officer approval, for fiscal years 2022 and 2023; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word "**CONTRACTOR**" as used herein shall refer to **MGT OF AMERICA CONSULTING, LLC**
- 1.2 "**OMB**" means the United States Office of Management and Budget.
- 1.3 "**Uniform Guidance**" is the document issued by the OMB that establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).
- 1.4 "**Plans**" means the Cost Allocation Plans and Indirect Cost Rates.

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, for each fiscal year of this Contract, **CONTRACTOR** will execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CONTRACTOR'S** responsibility for each year's Plans, and the total compensation for each year's Plans that **CONTRACTOR** will be paid, consistent with the provisions contained in Article V.
- 2.2 **CITY** and **CONTRACTOR** mutually agree that each annual engagement letter shall become part of this Contract, each time one is executed in accordance with Article VI and that this Contract and the annual engagement letter for the respective fiscal year shall govern the agreement between the parties for the fiscal year noted in the annual engagement letter. Any conflict between specific provisions of this Contract and similar provisions of the engagement letter, this Contract will prevail as indicated in subsection 6.3.

III. SCOPE OF SERVICES

CONTRACTOR, in accordance with each annual engagement letter, shall provide the following services:

COST ALLOCATION PLANS AND INDIRECT COST RATES

- 3.1 **CONTRACTOR** shall provide all services and perform all acts necessary to complete all of the Tasks and Sub-Tasks set forth in Attachment I to this Contract, which is incorporated herein by reference and made a part hereof for all purposes. The Tasks and Sub-Tasks to be performed and completed by **CONTRACTOR** under this Contract are set forth in more detail in Attachment II to this Contract, which is incorporated herein by reference and made a part hereof for all purposes. In the event of conflict between any provision in Attachment I and any provision in Attachment II, the provision in Attachment I shall control. In the event of conflict between any provision in this Contract and any provision in Attachment I or Attachment II, the provision in this Contract shall control.
- 3.2 **CONTRACTOR** shall discharge its duties under this Contract as a prudent expert solely in the interests of the **CITY** with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Contract and in a manner that avoids conflicts of interest and self-dealing.
- 3.3 **CONTRACTOR** shall at all times be sufficiently staffed with personnel qualified to render all of its services specified in this Contract.
- 3.4 **CONTRACTOR** shall conduct the examination with minimal disruption and interference with **CITY'S** normal day-to-day operations.
- 3.5 **CITY** shall have the right to terminate this Contract, in accordance with Article X. Termination, in whole or in part, should **CONTRACTOR'S** work not be in accordance with the Statement of Work.

IV. TERM AND COMMENCEMENT OF WORK

- 4.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the commencement of work through completion of the Plans for the fiscal years ending September 30, 2019, 2020, and 2021. In addition, **CITY** shall have the option to renew and extend the Contract for two (2) one (1) year terms, upon the prior written approval of the Deputy Chief Financial Officer for each renewal and extension, for fiscal years 2022 and 2023. Continuation of this Contract beyond the first year, and each and every year thereafter, is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** in writing promptly if there has not been made the necessary appropriation of funds.
- 4.2 In the event **CITY** requests **CONTRACTOR** to provide services for **Task 8** set out in Article III, Attachment I, the commencement and termination dates for the provision of such services shall be established in the written request from the

Deputy Chief Financial Officer or his designee and as agreed to by the **CONTRACTOR**. The terms and conditions of this Contract shall continue to apply to the provision of such services as mutually agreed to by both parties until the completion of such services to the satisfaction of the Deputy Chief Financial Officer or his designee.

V. CONTRACT PRICING AND BILLING

- 5.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the consulting services provided for in Article III (exclusive of services related to **Task 8**) for fiscal years 2019, 2020 and 2021 shall not exceed the amount indicated below. If this Contract is renewed and extended for fiscal years 2022 and 2023, the total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the consulting services provided for in Article III for those fiscal years shall not exceed the amounts indicated below.

Fiscal Year	Service Fee
2019	\$34,750
2020	\$34,750
2021	\$35,250
2022	\$35,250
2023	<u>\$35,750</u>
Total Contract	\$175,750

- 5.2 **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.

- 5.3 The payment schedule in each Fiscal Year for services rendered shall be as follows:

Progressive payments shall be based on achieving the following project milestones.

- 10% of the fee due upon project initiation (presentation of the data collection correspondence by the **CONTRACTOR** to the Director, or his designee)
- 30% of the fee (plus expenses) due following initial data collection interviews with City staff.

- 40% of the fee (plus expenses) due upon submission of draft cost allocation plan to the **CITY**.
- 20% of the fee (plus expenses) due upon submission of the final cost allocation plan to the **CITY**.

Payments are due within 30 days after receipt of an invoice by the **CITY**.

- 5.4 All progress billings for the fees established herein will be rendered by the **CONTRACTOR** to the **CITY** in a detailed breakdown of services provided by **CONTRACTOR** to include at a minimum the information presented in the following format:

Expense Type	Hours	Amount
Labor	(# Hours)	\$
Expenses		\$
Total Costs Due		\$

- 5.5 The total of all payments for services associated with **Task 8** as described in Article III, Attachment I, shall not exceed \$7,500. Payment of this amount due upon final acceptance by **CITY** of all deliverables to be provided under this **Task 8**.

VI. INCORPORATION BY REFERENCE

- 6.1 The annual engagement letter for fiscal year 2019, executed by **CONTRACTOR**, attached hereto as Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.
- 6.2 The parties hereto acknowledge and agree that prior to the commencement of the fiscal years 2020 and 2021, (and, if applicable through renewal and extension of this Contract, fiscal years 2022 and 2023) consulting services, herein required, **CITY** and **CONTRACTOR** will execute a new annual engagement letter for each upcoming fiscal year. That annual engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously incorporated annual engagement letter for consulting services.
- 6.3 In the event of a conflict or inconsistency between the specific terms of this Contract and the similar provisions of any of the annual engagement letters ultimately incorporated herein as Exhibit A, the terms of this Contract shall govern and prevail.

VII. OWNERSHIP OF DOCUMENTS; INTELLECTUAL PROPERTY

- 7.1 In no event shall the Work Product be considered "work for hire" as the term is

defined in the Uniform Commercial Code.

- 7.2 Notwithstanding anything contained to the contrary in this Contract or in any Statement of Work or other attachment hereto, any and all intellectual property or other proprietary data owned by **CONTRACTOR** prior to the effective date of this Contract or developed by **CONTRACTOR** outside of the scope of this Contract but not as a Deliverable or part of the Work Product ("Consultant Information") shall remain the exclusive property of **CONTRACTOR** even if such Consultant Information is embedded or otherwise incorporated into the Work Product or used to develop the Work Product. **CITY'S** rights under this Article shall not apply to any Consultant Information or any component thereof regardless of form or media.
- 7.3 Upon payment in full of all applicable fees, **CITY** shall receive and be the exclusive owner of all Deliverables and information, documents, writings, and instruments necessary to operate those Deliverables.

VIII. RECORDS

- 8.1 **CONTRACTOR** and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the **CITY** at their respective offices, at all reasonable times and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 8.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, **CONTRACTOR** shall retain the records until the resolution of such litigation or other such questions. **CONTRACTOR** acknowledges and agrees that **CITY** shall have access to any and all such documents at any and all times, as deemed necessary by **CITY**, during said retention period. **CITY** may, at its election, require **CONTRACTOR** to return said documents to **CITY** prior to or at the conclusion of said retention.
- 8.3 **CONTRACTOR** shall notify **CITY**, immediately, in the event **CONTRACTOR** receives any requests for information from a third party, which pertain to the documentation and records referenced herein. **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

IX. SBEDA ORDINANCE COMPLIANCE

9.1 The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

9.2 Definitions

Affirmative Procurement Initiatives (API) – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data

and analysis for the particular goods and services being purchased in a given contract.

Award – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

Best Value Contracting – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

Centralized Vendor Registration System (CVR) – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.

City – refers to the City of San Antonio, TX.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract

and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Evaluation Preference – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and RESPONDENTS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established

under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Joint Venture Incentives – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

M/WBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

M/WBE Evaluation Preference – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan

Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the City's 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

Segmented M/WBE Goals – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

SBE Directory – a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

Solicitation Incentives – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.

Suspension – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the RESPONDENT's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier

names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

9.3 SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of RESPONDENT's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, RESPONDENT further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding RESPONDENT's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and

promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of RESPONDENT or its subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to RESPONDENT's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by RESPONDENT to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by RESPONDENT of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being

performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the RESPONDENT shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the RESPONDENT and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

9.4 SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBEDA Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, RESPONDENT affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), RESPONDENT agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

9.5 Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex,

age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

9.6 Prompt Payment

Upon execution of this contract CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. RESPONDENT shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

9.7 Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
 1. Disqualification of RESPONDENT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provisions of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following:
 - 10.2.1 Neglect or failure by **CONTRACTOR** to perform or observe any of the terms, conditions, covenants or guarantees of this Contract or of any

amendment between **CITY** and **CONTRACTOR**;

10.2.2 Failure by **CONTRACTOR** to comply with Article IX. above and required throughout the entire term of this Contract, and/or to correct any deficiency therein within the time allotted, as specified in a written notice from **CITY** to **CONTRACTOR** SENT PURSUANT TO Section 9.4 above;

10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days written notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.

10.2.4 It is possible that because of unexpected circumstances, **CONTRACTOR** may determine that it is unable to form an opinion or complete the engagement. Accordingly, **CONTRACTOR** may decline to express an opinion or issue reports. Further, if in its professional judgment the circumstances necessitate, **CONTRACTOR** may resign from the engagement prior to completion. In the event of such resignation, **CONTRACTOR** shall give **CITY** thirty (30) days prior written notice.

10.3 Subsection 10.2.1 notwithstanding, in the event that any such neglect or failure to perform or observe terms, conditions, covenants, or guarantees occurs, **CITY** shall give written notice to **CONTRACTOR** and allow **CONTRACTOR** ten (10) days from the date of such receipt of notice to cure the neglect or failure. If the noted deficiencies are not remedied within the allotted time and to the satisfaction of the **CITY**, the **CITY** may proceed with the termination of this Contract. This Section 10.3 **shall not apply** to termination of this Contract pursuant to Article IX. Section 9.4 and Article X. Section 10.2.2 of this Contract, **or** to termination of this Contract pursuant to Section 10.2.4 above.

10.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated.

10.4.1 Upon receipt by either party of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall be provided to the **CITY**, provided that **CONTRACTOR** determines in its sole discretion it is able to provide such reports under applicable professional standards.

10.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all

work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice to terminate and for any necessary and proper work performed in the ensuing thirty (30) day period, to be determined after discussion with **CITY**, provided however, that such payment shall not exceed the maximum amount set out in subsection 5.1

XI. NOTICE

- 11.1 Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

<u>If intended for CITY, to:</u>	<u>If intended for CONTRACTOR, to:</u>
City of San Antonio Finance Department Attn: Troy Elliott 111 Soledad 5 th Floor San Antonio, Texas 78205 or P.O. Box 839966 San Antonio, Texas 78283-3966	MGT OF AMERICA CONSULTING, LLC Attn: Mark Carpenter 4009 Banister Lane, Suite 265 Austin, TX 78704

XII. CONFLICT OF INTEREST

- 12.1 **CONTRACTOR** certifies and warrants that neither **CONTRACTOR** nor any of its agents, representatives or employees has paid or offered to pay any bribe, kickback or similar payment or other consideration to be selected for the award of this contract or to influence the selection of its proposal.
- 12.2 **CONTRACTOR** certifies and warrants that after reasonable investigation to the best of its knowledge, no person who will in any way either directly participate in or directly supervise any agent, representative or employee who directly participates in the performance of the obligations hereunder has or will have any conflict of interest, direct or indirect, with **CITY**. For purposes of this subsection, "conflict of interest" shall mean that the entity or person has an interest that is materially and directly adverse to the interest of the **CITY** other than the vendor/customer relationship existing pursuant to this Contract.

- 12.3 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio City Charter and its Ethics Code prohibit a City officer or employee, from having a financial interest in any contract with the **CITY** or any City agency, such as City-owned utilities. A City "employee" is any employee of the **CITY** who is required to file a financial disclosure statement pursuant to Section 1(a) of Part G (Financial Disclosure Report). A City "officer" includes the Mayor or any Council member; a Municipal Court Judge or Magistrate; or a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the **CITY**. 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.

Pursuant to the subsection above, **CONTRACTOR** 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**. **CONTRACTOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contacts Disclosure Statement in compliance with the **CITY'S** Ethics Code.

- 12.4 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR'S** knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with the notice provisions set forth in Article XXIII. Below.
- 12.5 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm, in writing, that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.
- 12.6 **CONTRACTOR** warrants and certifies and this contract is made in reliance thereon that it has tendered to **CITY** an accurate Litigation Disclosure Statement.

XIII. INSURANCE

- 13.1 Prior to the commencement of any work under this Contract, **CONTRACTOR** shall furnish copies of all required endorsements and a completed Certificate(s) of

Insurance to the City's Finance Department, which shall be clearly labeled "**Preparation of Cost Allocation Plans and Indirect Cost Rates**" 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 Memorandum of Insurance or Binders as proof of insurance. The Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Contract until such Certificate and endorsements have been received and approved by the City's Finance Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

13.2 **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Contract 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 Contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

13.3 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 Contract, 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability	\$100,000 <u>Combined Single Limit for Bodily Injury</u>

a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$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.

13.4 **CONTRACTOR** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **CONTRACTOR** herein, and provide a Certificate of Insurance and endorsement that names **CONTRACTOR** and **CITY** as additional insureds. **CONTRACTOR** shall provide **CITY** with said Certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.5 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the **CITY**, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **CONTRACTOR** shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to **CITY** at the address provided below within 10 days of the requested change. **CONTRACTOR** shall pay any costs incurred resulting from said changes.

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

13.6 **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 insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract

with the **CITY**, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**; and
 - Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 13.7 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 Contract.
- 13.8 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.
- 13.9 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 Contract.
- 13.10 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 Contract.
- 13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 13.12 **CONTRACTOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNIFICATION AND RELATED PROVISIONS

- 14.1 **CONTRACTOR** 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 Contract, 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 Contract. 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.**
- 14.2 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 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 and shall see to the investigation and defense of such claim or demand at **CONSULTANT'S** cost. The **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.
- 14.3 **CONSULTANT** shall retain defense counsel within seven (7) business days of **CITY'S** written notice that **CITY** is invoking its right to indemnification under this Contract. Failure of the **CITY** to provide a written rejection of **CONSULTANT'S** counsel, including reasonable cause, within (3) days of receipt of **CONSULTANT'S** notice shall constitute acceptance of **CONSULTANT'S** counsel. If **CONSULTANT** fails to retain Counsel within such time period, **CITY** shall have the right to retain defense counsel on its own behalf, and **CONSULTANT** shall be liable for all costs incurred by **CITY**. **CITY** shall also

have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XV. REPRESENTATIONS AND WARRANTIES OF PARTIES

- 15.1 **CONTRACTOR** shall provide guidance to **CITY** in determining the data required to provide its services under this Contract. To the best of **CITY'S** knowledge, **CITY** guarantees the accuracy and completeness of the data provided by **CITY** to prepare the *Cost Allocation Plans and Indirect Cost Rate Proposal*. **CITY** acknowledges and agrees that **CONTRACTOR** shall be entitled to rely upon the accuracy and completeness of the data provided by **CITY** to perform the work under this Contract and **CONTRACTOR** shall not be liable for any missed or lost revenue associated with, or related to, the services provided pursuant to this Contract that result from **CONTRACTOR'S** reliance upon the data provided by **CITY**.
- 15.2 **CONTRACTOR** represents and warrants to **CITY** that the Cost Allocation Plans and the Indirect Cost Proposal developed by **CONTRACTOR** and delivered to **CITY** in accordance with the terms and conditions of this Contract will be in full compliance with the then-current version of (a) all applicable Generally Accepted Accounting Principles (GAAP); (b) all applicable Federal and State statutes, rules, regulations, and circulars, including but not limited to Uniform Guidance State of Texas Single Audit Circular for state funding.
- 15.3 **CITY** shall notify **CONTRACTOR** in writing in the manner specified in Article XI Notice in the event of a challenge by any Federal or State Agency, Commission, Department, or Office to any portion(s) of the Cost Allocation Plans and/or the Indirect Cost Proposal prepared by **CONTRACTOR** and delivered to **CITY** in accordance with the terms and conditions of this Contract. **CONTRACTOR** shall, at no additional compensation to **CONTRACTOR** or expense of any nature or type whatsoever to **CITY**, timely provide to **CITY** and/or such Federal or State Agency, Commission, Department, or Office all services, personnel, records, work papers, and other materials or information that are necessary to support and justify the challenged portion(s) of such Cost Allocation Plans and/or the Indirect Cost Proposal.

- 15.4 **CONTRACTOR** shall not be liable for audit disallowances except those due to **CONTRACTOR'S** willful misconduct or gross negligence.
- 15.5 The provisions of this Article XV shall survive the completion or earlier termination of this Contract.

**XVI. BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST
ORGANIZATION; PROHIBITION ON CONTRACTS WITH COMPANIES
BOYCOTTING ISRAEL**

16.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§ 806.051 (recodified as 2270.0201), 807.051 (repealed as of May 27, 2017), or 2252.153.

CONTRACTOR hereby represents and warrants that as of the effective date hereof, it is not a company that is identified on a **List of (1) Scrutinized Companies with ties to Sudan or (2) Companies Engaging in Scrutinized Business Operations in Iran** prepared and maintained by the Texas State Comptroller's office under Chapter 2270 of the Texas Government Code.

The Texas state comptroller currently does not prepare, maintain or provide to any governmental entity a list of scrutinized companies with ties to Foreign Terrorist Organizations.

16.2 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

CONTRACTOR hereby represents and warrants that it does not boycott Israel, and will

not boycott Israel during the term of the contract.

16.3 City acknowledges that City is relying on Consultant's representations and warranties set forth above. If any of Consultant's representations and warranties set forth in this ARTICLE XIV are found to be false, City may terminate the Agreement for material breach.

XVII. ASSIGNMENT AND SUBCONTRACTING

- 17.1 **CONTRACTOR** shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of **CONTRACTOR**. **CONTRACTOR**, its employees or its subcontractors shall perform all necessary work.
- 17.2 It is **CITY'S** understanding and this Contract is made in reliance thereon, that **CONTRACTOR** intends to use the following subcontractors in the performance of this Contract: **NONE** Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, or designee prior to the provision of any services by said subcontractor.
- 17.3 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 **CONTRACTOR**. **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONTRACTOR**, 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 Director, or designee.
- 17.4 Except as otherwise stated herein, **CONTRACTOR** 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 Director, not to be unreasonably withheld, as evidenced in writing. As a condition of such consent, if such consent is granted, **CONTRACTOR** shall remain liable for completion of the services outlined in this Contract in the event of default by the successor **CONTRACTOR**, assignee, transferee or subcontractor.
- 17.5 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 **CONTRACTOR** 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 **CONTRACTOR** shall thereupon cease and terminate, in accordance with Article X. Termination, notwithstanding any other remedy available to **CITY** under this Contract. The violation of this provision by **CONTRACTOR** shall in no event release **CONTRACTOR** from any obligation under the terms of this Contract, nor shall it relieve or release **CONTRACTOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

XVIII. INDEPENDENT CONTRACTOR

- 18.1 **CONTRACTOR** covenants and agrees that he or she or it is an independent contractor and not an officer, agent, servant or employee of **CITY**. **CONTRACTOR'S** staff accountant(s) provided hereunder will remain the employees of **CONTRACTOR**, performing their work independently, but as assigned by Director or designee. The doctrine of respondent superior shall not apply as between **CITY** and **CONTRACTOR**, 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 **CONTRACTOR**. The parties hereto understand and agree that **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 **CONTRACTOR** under this Contract and that **CONTRACTOR** have no authority to bind **CITY**.
- 18.2 Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by **CITY**, what instruction or direction is provided by **CITY**, **CONTRACTOR**, 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.

XIX. AMENDMENTS

- 19.1 Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both **CITY** and **CONTRACTOR**, and subject to approval by the City of San Antonio City Council, evidenced by passage of an ordinance.
- 19.2 The parties hereto understand and agree that any request(s) by the **CITY** to provide services for **Task 8** pursuant to Article III, Attachment I shall not constitute an amendment to the provisions of this Contract.
- 19.3 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.

XX. LICENSES/CERTIFICATIONS

- 20.1 **CONTRACTOR** warrants and confirms that **CONTRACTOR** and any other person designated to provide services hereunder has and shall maintain the requisite training, license and/or certification to provide said services, and meets and shall continue to meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXI. COMPLIANCE

- 21.1 **CONTRACTOR** shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XXII. OTHER AGREEMENTS

- 22.1 It is acknowledged and understood by the parties hereto that this Contract, including the respective Annual Engagement Letter for each fiscal year executed pursuant to it, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. It is also acknowledged and understood by the parties hereto that with the execution of this Contract, the authorizing ordinance, the Annual Engagement Letters and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CONTRACTOR** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each year's Plans review, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR** and that engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for consulting services. In the event of a conflict or inconsistency between specific terms of this Contract and the similar provisions of any of the engagement letters, ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

XXIII. SEVERABILITY

- 23.1 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 possible which is legal, valid and enforceable.

XXIV. LAW APPLICABLE

- 24.1 **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.**
- 24.2 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.

XXV. LEGAL AUTHORITY

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

XXVI. PARTIES BOUND

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

XXVII. CAPTIONS

- 27.1 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 and **AGREED** to this the _____ day of _____, 2018.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
MGT OF AMERICA CONSULTING, LLC.

Troy Elliott, CPA
Deputy Chief Financial Officer

A. Trey Traviesa
CEO & Chairman

Approved as to Form:

Robert K. Nordhaus
Assistant City Attorney

A T T A C H M E N T I

Tasks From RFP

To develop the Full-Cost Central Services Cost Allocation Plan, Uniform Guidance Central Services Cost Allocation Plan, Full-Cost Indirect Cost Rate for CMS capital projects, and Indirect Cost Rate Proposals following Uniform Guidance for FY 2019, FY 2020 and FY2021, with the potential of two (2) one (1) year extensions for FY 2022 and FY 2023.

Task 1 – Provide a detailed document outlining the proposed methodologies to be used to prepare the Cost Allocation Plans and Indirect Cost Rate Proposals and brief City staff on such methodologies (must be completed within one (1) week from the date of contract execution).

Task 2 – Research and gather materials necessary to develop the cost allocation plans and indirect cost rate proposals (must be completed no later than two (2) weeks from completion of Task 1).

Coordinate development of plan, including information required and methodology, with appropriate OMB, Finance and other City staff;

Identify City's available financial and organizational information sources, including annual reports and organizational charts for the various City departments;

Update City's organizational charts and classify all City functions into one of the three categories: executive, legislative, or judicial;

Inventory all Federal, State and enterprise funds to identify areas and projects with the greatest potential for recovery of administrative costs;

Identify City Departments that provide administrative services to other departments such as data processing, purchasing, accounting, and personnel;

Develop the allocation bases for administrative costs to City departments in compliance with Uniform Guidance;

Develop measurable units of service for user City departments in order to measure the units of service used;

Prepare cost allocation worksheets for each City department calculating expenses in the immediately preceding fiscal year that are allowed under Uniform Guidance;

Prepare worksheets for each user department showing services provided to such department in measurable units of service.

Task 3 – Utilize costs identified in Task 1 to develop, submit and recover costs that are recoverable under various Federal grant programs, to include Internal Service Fund allocations; (must be completed no later than three (3) weeks from completion of Task 2).

Determine the cost of operating each program inventoried in Tasks 1 and 2;

Identify indirect costs associated with the operation of each program and provide the City with a spreadsheet that identifies such costs;

Present final cost allocation plan to the City staff showing indirect costs recoverable from Federal and State agencies;

Help negotiate City's recoverable costs pursuant to Uniform Guidance with Federal and State officials to include coordination with the City's federal cognizant and state coordinating agencies to acquire their written approval of the Indirect Cost Rate Proposal, if necessary.

Task 4 – Develop a Full Cost Central Services Allocation Plan to allow the City to account for all other central services costs from non-general fund sources other than grant funded programs (must be completed no later than one (1) week from completion of Task 2).

Task 5 – Develop an Indirect Cost Rate Proposal for the following City departments (must be completed no later than two (2) weeks from completion of Task 2).

Aviation

Transportation & Capital Improvements – only Capital Management Services Fund

Center City Development & Operations

Fire

Health

Human Services

Library

Neighborhood & Housing Services

Police

Task 6 – Provide final and supporting documentation (must be completed no later than three (3) weeks from completion of Tasks 2).

Respondent will print four (4) copies each of the final Cost Allocation Plans and the Indirect Cost Rate Proposal to be bound with covers imprinted with the company logo;

CONTRACTOR will provide electronic versions of the final Cost Allocation Plans and the Indirect Cost Rate Proposal;

CONTRACTOR will provide all electronic worksheets, templates and supporting documentation used to develop the plans.

Task 7 – Provide on-site training to City staff (must be completed no later than one (1) week from completion of Task 6).

Train appropriate City staff that either administer projects or are associated with budgeting functions to develop cost allocation plans to recover costs for their departments;

Train appropriate City staff to develop similar plans for the City in the future.

Task 8 – Assist City staff with the development/ best practice of modules for preparation of future cost allocation plans and indirect cost rates for Workers' Compensation, Liability, Purchasing & General Services, and Information Technology Services.

These charges will be added to the Uniform Guidance indirect costs, in order for the City to properly recover dollars expended for grant personnel. CONTRACTOR will further provide best practices obtained from other cities relating to indirect cost charges allocated to grants.

This Task 8 will be performed not more than one (1) time during the entire term of this Agreement, and will be performed only if **CITY** requests its performance in writing to **CONTRACTOR**.

A T T A C H M E N T I I

**Tasks From MGT Proposal
Pages 52-61**

Part 200 but also the practical applications of the principles and guidelines relative to each jurisdiction and unique situation. No other firm includes such a deep bench of staff members with ISF experience.

MGT project members have extensive knowledge and negotiation skills with both preparing and defending cost allocation plans, indirect cost rate proposals, and Internal Service Fund (Section 2) charges with various state and federal agencies. The knowledge we have acquired through our prior experiences with state and federal negotiators will enable us to obtain the best possible results for the City in the event of an audit.

TECHNICAL PLAN

Local governments often contract with a consulting firm to receive cost allocation and related services. The reasons for contracting vary but most often include:

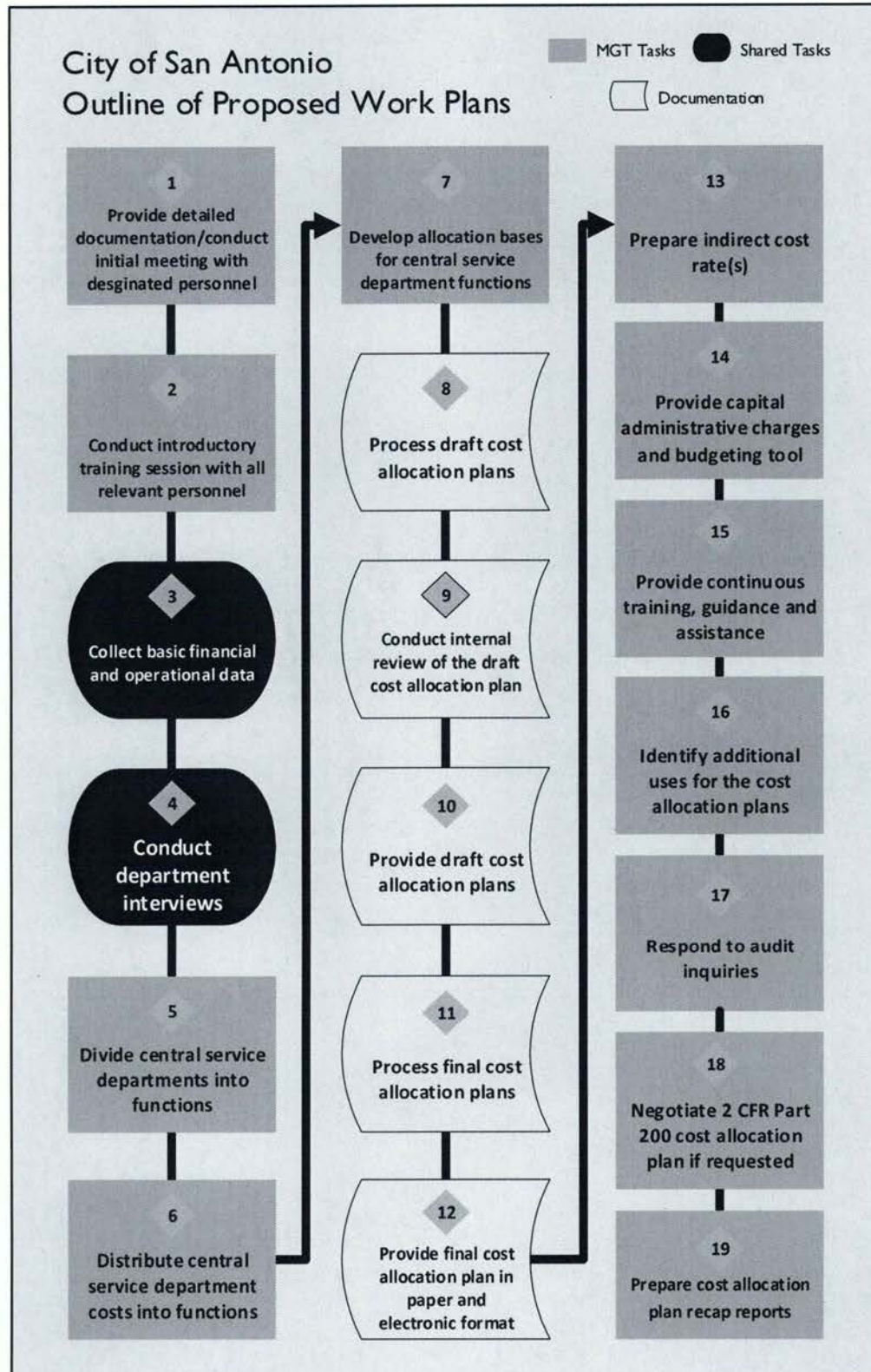
- ♦ Expertise
- ♦ Understanding
- ♦ Ability to integrate knowledge from similar engagements
- ♦ Maximize indirect cost recovery
- ♦ Interface with approval entities
- ♦ Educate
- ♦ Independence (City with State and Federal agencies and General Fund with non-General Funds)

Each of these common reasons is included in our approach and work plan for this engagement.

Our technical plan for preparing the two cost allocation plans is similar. Therefore, for simplicity and conciseness, one technical plan is presented that covers the two cost allocation plans. Additional tasks to prepare the indirect cost rates are also included in our technical plan. Finally, the last task includes completion of Task 8 as identified in the City's RFP. This scope would only be completed if required by the City at some point during the term of this engagement.

As illustrated by the work flow graphic on the following page, the cost allocation plans, indirect cost rates, and assistance with development of Internal Service Fund best practices will be prepared by completing 19 (nineteen) tasks. A detailed task narrative follows in this section.

PROPOSED WORK PLAN TASK WORK FLOW



5. ATTACHMENT A, PART THREE – PROPOSED PLAN

♦ ♦ ♦

TASK-RFP SCOPE CROSSWALK MATRIX

PROPOSED TASK	WEEKS				ONGOING AS REQUESTED	STAFF	CROSSWALK TO RFP SCOPE OF SERVICES TASKS
	1	2-5	6-8	9			
1. Provide Document and Initial Meeting						Sewell, Carpenter, Swendig	Task 1
2. Initial Training						Sewell, Carpenter	Additional Service
3. Collect Basic Data						Sewell, Carpenter, Swendig	Task 2
4. Conduct Interviews						Sewell, Carpenter, Swendig	Task 2
5. Divide Departments						Sewell, Carpenter, Swendig	Task 2
6. Distribute Costs						Sewell, Carpenter, Swendig	Task 2
7. Develop Allocation Bases						Sewell, Carpenter, Swendig	Task 2, Task 4 and Task 5
8. Process Draft Plans						Sewell, Carpenter, Swendig	Task 3 and Task 4
9. Internal Review						Sewell, Carpenter, d'Auteuil	Task 3 and Task 4
10. Provide Draft Plans						Sewell, Carpenter	Task 3 and Task 4
11. Process Final Plans						Sewell, Carpenter, Swendig	Task 3 and Task 4
12. Provide Final Copies						Sewell, Carpenter	Task 3, Task 4 and Task 6
13. Prepare Indirect Rates						Sewell, Carpenter	Task 5 and Task 6

5. ATTACHMENT A, PART THREE – PROPOSED PLAN

♦ ♦ ♦

PROPOSED TASK	WEEKS				ONGOING AS REQUESTED	STAFF	CROSSWALK TO RFP SCOPE OF SERVICES TASKS
	I	2-5	6-8	9			
14. Training						Sewell, Carpenter	Task 7
15. Identify Additional Uses						Sewell, Carpenter	Additional Service
16. Respond to Audit						Sewell, Carpenter, d'Auteuil	Additional Service
17. Negotiate if Requested						Sewell, Carpenter, d'Auteuil	Task 3
18. Prepare Recap Report						Sewell, Carpenter	Additional Service
19. Assist in developing ISF cost allocation and chargeback best practices						Schlyer, D'Auteuil, Carpenter, Sewell	Task 8

DETAILED TASK NARRATIVE FOR THE COST ALLOCATION PLANS, INDIRECT COST RATES, AND ISF ASSISTANCE

TASK 1.0: PROVIDE DETAILED DOCUMENTATION AND CONDUCT AN INITIAL MEETING WITH DESIGNATED PERSONNEL

Provide a detailed document identifying and clarifying the proposed methodologies, approach, timeline, responsibilities and deliverables applicable to the entire project.

Meet with City personnel in San Antonio who have responsibility or a high interest in the cost allocation plans, indirect cost rates, and billing charges/budgeting tool. This meeting will refine the specific objectives, requirements, measurements, and schedule of the consulting project. This meeting will also help the project consultants further understand the unique aspects and project expectations of City personnel.

TASK 2.0: CONDUCT AN INTRODUCTORY TRAINING SESSION WITH ALL RELEVANT PERSONNEL ("COST ALLOCATION 101")

Conduct an initial and introductory training session with key City personnel or a kick-off presentation for project stakeholders. The project consultants will work with City personnel to establish the objectives, content, and list of attendees for this meeting or presentation. This session is vital to successful project results including acceptance by City personnel and elected officials. Agenda items for this meeting or presentation could include:

- ♦ Review the project objectives.

- ♦ Review and confirm the federal and/or state requirements.
- ♦ Finalize and document the project measurements.
- ♦ Review and finalize the project schedule.
- ♦ Review available financial data.
- ♦ Review available allocation data.
- ♦ Explain the cost allocation plan.
- ♦ Summarize the purpose for preparing the project deliverables.
- ♦ Explain how each meeting attendee is involved in the project deliverables.
- ♦ Discuss example summary reports produced by the project.
- ♦ Discuss example applications produced by the project.
- ♦ Address potential areas for additional direct or indirect cost recovery.
- ♦ Solicit questions and answers.

TASK 3.0: COLLECT BASIC FINANCIAL AND OPERATIONAL DATA

Collect, review, and update as needed data such as organization charts, expenditure statements, budgets, personnel counts, salary reports, and transaction statistics. The project consultants will work with City personnel to develop and gather the needed data in the most efficient way possible. The review of this data will provide the structure for the cost allocation plans including the determination of “allocating” and “receiving” departments.

Allocating departments are referred to as central service departments and will include, but are not limited to, accounting, purchasing, human resources, and information technology. Receiving departments will be all applicable City general fund departments or divisions and all other City non-general funds.

The project consultants will also identify, evaluate, and inventory federal and state funded City programs and internal service funds so that central service support will be properly allocated.

The project consultants will also classify all City functions into executive, legislative, or judicial.

TASK 4.0: CONDUCT DEPARTMENT INTERVIEWS

Meet with and interview each central service department to determine the allowable expenditures, services provided, charge backs or direct bills, personnel providing the services, the recipients of the provided services, and appropriate transaction data.

TASK 5.0: DIVIDE CENTRAL SERVICE DEPARTMENTS INTO FUNCTIONS

Divide the allowable costs in each central service department into functions. Functions represent distinct activities within a department.

Using information gathered in Task 4, the project consultants may complete Personnel Staffing Analysis (PSA) worksheets to assist in dividing departments into functions. The PSA provides a basis for the

distribution of department costs into department functions. During interviews with central service departments, the project consultants will discuss assignments and duties of City personnel.

Determine and distribute departments into functions based on timesheets, assignments, activities, or other allowed methods. Once staff members and their corresponding salaries are distributed into functions, other department costs such as materials and supplies will also be distributed into the same functions. This task breaks a department into functional cost pools, which can then be allocated throughout the City using meaningful, measurable, and auditable allocation bases.

TASK 6.0: DISTRIBUTE CENTRAL SERVICE DEPARTMENT COSTS INTO FUNCTIONS

Distribute the allowable costs in each central service department, and the incoming costs into each central service department, into the functions determined in Task 5. Incoming costs are the costs from other central service departments determined by a double step-down calculation. The distribution of allowable department costs and incoming costs will determine the total cost of providing each distinct service within each central service department.

This step utilizes a feature in the MGT proprietary cost allocation software not available in most other cost allocation plan software. The MGT proprietary cost allocation software has the ability to analyze, display, and allocate the indirect costs of each central service department in great detail. This detail facilitates review, explanation, and understanding of incoming costs which leads to reduced errors, fewer reruns of reports, and the ultimate acceptance and approval of the cost allocation plans.

TASK 7.0: DEVELOP ALLOCATION BASES FOR CENTRAL SERVICE DEPARTMENT FUNCTIONS

Determine an appropriate allocation base for each function in each central service department. This determination will serve as the basis for allocating the allowable costs in each function to the recipients of the service. The project consultants will request corresponding transaction data or measurable units of service from central service department personnel.

Central service departments will allocate costs to all City general fund departments and non-general fund funds. This allocation methodology ensures the most fair and accurate distribution of costs as opposed to a methodology that singles out particular departments or funds for maximum allocation.

TASK 8.0: PROCESS DRAFT COST ALLOCATION PLANS

Process draft cost allocation plans using the MGT proprietary cost allocation software. The cost allocation plans will include summary and detail reports. The summary report in each cost allocation plan provides information on the dollar amounts allocated from each central service department to every receiving department. The detailed reports in the cost allocation plans provide information on the expenditures, allowable costs, incoming costs, personnel distribution, functions direct costs billed, and allocation bases for every central service department.

The MGT proprietary cost allocation software incorporates a double step-down methodology, is technical and detailed, has a self-auditing feature, and has been audited and approved by numerous Federal and State officials.

The Microsoft Windows-based MGT proprietary software is written in a relational database and uses Microsoft Excel as a report writer. This platform provides unlimited flexibility in calculating, formatting,

and reporting information. Charts and graphs can be used to explain and illustrate allocation information. Allocation information is automatically produced that compares allocation totals to receiving departments (funds) from year-to-year.

Additionally, the MGT proprietary cost allocation software automatically generates management reports. The City of San Antonio can already take advantage of these reports and make comparisons across several years of cost allocation plan preparation. These reports provide:

- ♦ A schedule comparing total allocated costs between fiscal years for every receiving department.
- ♦ A schedule comparing allocated costs between fiscal years, by central service department, to receiving departments meeting defined criteria (for example, a variance greater than 10 percent or a variance greater than \$10,000).
- ♦ A schedule documenting unit costs of identified support activities such as the cost of payroll per employee or the cost per purchase order.
- ♦ A self-auditing schedule that reconciles the sum of all central service department expenditures to the sum of all allocated costs.

TASK 9.0: CONDUCT INTERNAL REVIEW OF THE DRAFT COST ALLOCATION PLANS

The project director, project consultants, and quality assurance consultant will undertake an internal review process to raise the accuracy of the cost allocation plans and ensure City personnel do not waste time reviewing substandard or incomplete work.

TASK 10.0: PROVIDE DRAFT COST ALLOCATION PLANS

With applicable City personnel in San Antonio, provide and review draft results of the cost allocation plans. This step is an opportunity to review preliminary results, address questions or concerns, and make changes as necessary. Task 9 will ensure City officials review quality draft results and are not forced to spend hours editing and correcting substandard work.

TASK 11.0: PROCESS FINAL COST ALLOCATION PLANS

Process the final cost allocation plans after addressing issues or concerns raised in Task 10. The final cost allocation plans will be professionally formatted and displayed.

TASK 12.0: PROVIDE FINAL COST ALLOCATION PLANS IN PAPER AND ELECTRONIC FORMAT

Provide four (4) printed and bound copies and one electronic copy (Excel and/or Adobe PDF file) on CD-ROM or email of the final cost allocation plans to City personnel following confirmation that the work is final by the City's project manager. Additionally, the project consultants will provide electronic copies (Excel or Adobe PDF file) of summary schedules, variance analyses, and management reports as requested.

TASK 13.0: PREPARE INDIRECT COST RATES

Prepare indirect cost rates based on the completed 2 CFR Part 200 cost allocation plan for City designated departments. The indirect cost rate will adhere to 2 CFR Part 200 principles and Uniform Guidelines.

TASK 14.0: PROVIDE CONTINUOUS TRAINING, GUIDANCE, AND ASSISTANCE

Provide continuous training, guidance, and assistance on reading, understanding, and applying the results of the cost allocation plans and any associated calculations.

Informal training will take place concurrent with the preparation of the project deliverables as well as a formal training session after City acceptance of the final project results. Additional training and follow-up support may be provided to City personnel on an as-needed basis.

A final training session will also provide closure to the initial training session offered at the beginning of the project. MGT consultants will walk through the processes and methodologies undertaken during the study. The group will identify where the project ran smoothly and where improvements or adjustments should be made to the process. Training participants will come out of the training with a much better understanding of the key components of the cost allocation plan and indirect rate development methods and processes.

This training session will also include a session where we discuss with staff how the City could develop a module in SAP for preparation of future cost allocation plans. One of the key components of successfully transitioning to an in-house SAP module will be commitment of City staff to understand thoroughly the cost allocation preparation process.

TASK 15.0: IDENTIFY ADDITIONAL USES FOR THE COST ALLOCATION PLANS

Provide the City with already identified uses for the cost allocation plan data, as well as, continuously explore additional applications of the cost allocation plans.

TASK 16.0: RESPOND TO AUDIT INQUIRIES

Provide answers and supporting documentation in response to appropriate agency audit inquiries. Additionally, the project consultants will work with appropriate agency auditors to resolve issues in the current and future cost allocation plans.

TASK 17.0: NEGOTIATE THE 2 CFR PART 200 COST ALLOCATION PLAN IF REQUESTED

Negotiate the 2 CFR Part 200 cost allocation plan with applicable Federal and State officials, if requested.

TASK 18.0: PREPARE A COST ALLOCATION PLAN PROJECT RECAP REPORT

Prepare a cost allocation plan project recap report for City personnel. This report will have two primary objectives. The first objective of this report is to provide City personnel an overview of the just-completed cost allocation plan. This overview will include:

- ♦ Comments from City personnel involved in the project.
- ♦ Aspects of the cost allocation plan project that went well.
- ♦ Aspects of the project that need improvement.
- ♦ Areas of emphasis for the next year.

The project consultant will then formulate this information into the following years' work plan as applicable.

The second objective of this report is to provide City personnel an overview of the project results and project applications. This overview will include:

- ♦ Specific instructions on applying the results of the project into existing City operations.
- ♦ Ideas for additional applications of the cost allocation plans.
- ♦ Potential opportunities for further cost recovery or revenue enhancement activities.

TASK 19.0: ASSIST WITH DEVELOPMENT OF BEST PRACTICES RELATED TO INTERNAL SERVICE FUND (ISF) COST ALLOCATION AND CHARGEBACKS

MGT will make available its most senior, experienced staff to assist with the best practice assessment of the City's Internal Service Funds. We will conduct an initial meeting to discuss the exact level of assistance that the City requires and then finalize a specific task plan using the following tasks as a starting point.

The following task narrative describes the proposed work plan and tasks to assist the City in identifying best practices for developing Internal Service Fund charges and ensuring that the fund structure and billing mechanisms follow 2 CFR Part 200.

DETAILED TASK NARRATIVE – INTERNAL SERVICE FUND BEST PRACTICES ASSESSMENT

An additional seven (7) tasks are associated with assisting the City in developing best practices for Internal Service Funds in the City's cost allocation program. Those tasks are identified below:

TASK 1.0: SUBMIT PRELIMINARY DATA REQUEST AND CONDUCT INITIAL KICKOFF MEETINGS

Initially, we will submit a preliminary data request for general information regarding Workers Compensation and General Liability Assessment Funds. This enables the consulting team to familiarize themselves with the overall operations and organizational structure that allows for a more productive initial kickoff meeting to follow.

Our project team will meet with City personnel who have responsibility or a high interest in the ISF best practices assessment. These meetings will refine the specific goals, objectives, requirements, purposes, and schedule of the project. The meetings will also help the project consultants understand the unique aspects of each internal service fund.

TASK 2.0: REVIEW OF ORGANIZATIONAL STRUCTURE AND SERVICE DELIVERY

During this task, the project team will collect and review data such as organization charts, expenditure statements, budgets, and staffing levels. Project consultants will work with City personnel to develop and gather the needed data in the most efficient way possible. Project consultants will meet with and interview representatives from the various organizational units involved in order to determine the services provided, personnel providing the services, the recipients of the provided services and direct costs (budget and actual).

The result of this task will serve as the basis of understanding the structure for the current internal service models, including the determination of service offerings.

TASK 3.0: SURVEY OTHER ENTITIES FOR BEST PRACTICES

MGT will use its resources and knowledge of Internal Service Fund Structures to develop a brief survey that will identify any applicable best practices in ISF rate development. MGT will survey 3-5 comparable agencies to assist in developing and refining a list of findings and best practices recommendations.

TASK 4.0: DEVELOP DRAFT REPORT OF BEST PRACTICES FINDINGS AND RECOMMENDATIONS

MGT will prepare a draft report of our findings and recommendations based upon our analysis of the City's current practices related to billing user entities for the various internal services provided by the Internal Service Fund departments. This analysis will include a comparison to the industry best practices found in the survey and whether the City's current billing methodologies conform to the principles and guidelines identified in 2 CFR Part 200.

TASK 5.0: PRESENT THE DRAFT REPORT TO CITY STAFF AND MODIFY AS NEEDED

We take great pride in the quality of our deliverables and our reputation. Not only do we need to meet the rules and regulations governing ISF cost allocation, but we also strive to exceed the expectations of our clients. We do not consider a project final until our clients are completely satisfied and **they** consider it final.

This means that we go to great lengths to communicate draft findings to client representatives **throughout** the project. We recognize the importance of client involvement in the accuracy and ultimate acceptance of our deliverables. Although we will be presenting draft reports and findings throughout the project, this task simply represents the culmination of those efforts into a meeting with all vested parties where all of our proposed deliverables are presented and discussed. Any modifications or changes after this meeting will be incorporated into final deliverables as outlined below.

TASK 6.0: PROVIDE THE FINAL ISF BEST PRACTICES REPORT TO THE CITY

We will provide both printed and electronic copies (Adobe PDF file, Excel and MSWord on CD-ROM) of the ISF Best Practices Report to City personnel following confirmation that the work is considered final by the City's project manager. Additionally, we will provide electronic copies of all support files or schedules, and other reports as requested.

TASK 7.0: ASSIST CITY STAFF WITH THE PREPARATION AND DELIVERY OF ONE-HALF (1/2) DAY OF PRESENTATIONS TO CITY MANAGEMENT AND OTHER STAKEHOLDERS

MGT staff will also assist in the preparation and presentation of the findings and recommendations to City staff, City management and interested stakeholders. This will include preparation of presentation documents, attendance at meetings and/or presentations, and fielding questions or concerns from those in attendance.

As previously stated, the ultimate project deliverables and outcomes will be identified and established jointly between MGT and the City. Although our actual work plan will contain the activities just described, these activities will be highly customized to the unique needs and desires of the City of San Antonio.