

**PROFESSIONAL SERVICES AGREEMENT
FOR
OCCUPATIONAL HEALTH SAFETY MANAGEMENT SYSTEM SERVICES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City"), pursuant to Ordinance No. _____ passed and approved on the _____ day of _____ 2019 and ABS Quality Evaluations, Inc. ("Registrar"), both of which may be referred to herein collectively as the "Parties".

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

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Registrar" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's Office of Risk Management.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2019 and terminate on September 30, 2022.

2.2 At City's option, this Contract may be renewed and extended beyond the date above for two additional one year renewal periods. Renewals shall be in writing, and signed by Director. City shall also have the right to extend this contract under the same terms and conditions for the renewal periods. Said renewals shall not require City Council approval, but are subject to and contingent upon appropriation of funds for payment of all costs to be incurred during those periods.

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Registrar agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 All work performed by Registrar hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Registrar, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Registrar's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 The following services shall be performed by Registrar with regard to the following six (6) departments: Solid Waste Management; Transportation and Capital Improvements; Building and Equipment Services; Office of Risk Management; Parks and Recreation; and Development Services:

3.4 Registrar shall perform the following services:

3.4.1 Conduct an audit to determine the readiness for Stage 2 certification audit.

3.4.1a. Registrar will review the management system's documented information, evaluate the identified City department's specific conditions and have discussions with employees.

3.4.1b. Registrar will confirm that objectives and key performance indicators are in place and understood.

3.4.1c. Registrar will review the scope of the management system and obtain information on the Organization's processes and operations, the equipment being used, the levels of control that have been established as well as any applicable statutory or regulatory requirements.

3.4.2 Conduct a Certification Audit to evaluate the implementation and effectiveness of the City's Safety Management System.

3.4.2a. Registrar will determine the degree of compliance with the standard's requirements, and report any non-conformance or potential non-conformance that the City will have to correct before the certificate can be issued.

3.4.2b Registrar will ensure the audit scope will be defined based on multi-site sampling procedures as approved by the accreditation body.

3.4.3 Issuance of Certificate

3.4.3a Once any non-conformances reported from the Stage 2 audit are addressed by the City, the Registrar will issue a recommendation for certification according to the timeframe previously agreed upon.

3.4.3b Registrar will issue an individual certificate for the department(s) included in the partial certification audit scope, providing a reference to the City's SMS Main Certificate;

3.4.4 Annual Surveillance Audits

3.4.4a. Registrar will conduct two separate Annual Surveillance Audits. Each audit will cover a sample portion of the audit criteria used for the certification to ensure that the certification status is maintained by the City.

3.4.4b. The first surveillance audit will take place one year after the Stage 2 audit is conducted. Audit scope will be defined based on multi-site sampling procedures as approved by the accreditation body.

3.4.4c. The second audit will be performed one year after the first surveillance audit is conducted. Audit scope will be defined based on multi-site sampling procedures as approved by the accreditation body.

IV. COMPENSATION TO REGISTRAR

4.1 In consideration of Registrar's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Registrar an amount not to exceed \$119,200.00 as follows:

Year 1	\$ 30,950.00
Year 2	\$ 19,250.00
Year 3	\$ 17,350.00
Year 4 Option	\$ 32,400.00
Year 5 Option	\$ 19,250.00

4.2 Registrar shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy

to City of San Antonio, Office of Risk Management, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.3 No additional fees or expenses of Registrar shall be charged by Registrar nor be payable by City. The parties hereby agree that all compensable expenses of Registrar have been provided for in the total payment to Registrar as specified in section 4.1 above. Total payments to Registrar cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Registrar following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Registrar, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Registrar pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Registrar.

5.2 Registrar understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Registrar 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 Agreement 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.

6.2 Registrar shall retain any and all documents produced as a result of services provided hereunder for a period of four years (hereafter referred to as "retention period") from the date of termination of the Agreement. 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, Registrar shall retain the records until the resolution of such litigation or other such questions. Registrar 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 Registrar to return the documents to City at Registrar's expense prior to or at the conclusion of the retention period. In such event, Registrar may retain a copy of the

documents.

6.3 Registrar shall notify City, immediately, in the event Registrar receives any requests for information from a third party, except for requests from ANAB directly related and needed to fulfill the terms of this Agreement, which pertain to the documentation and records referenced herein. Registrar understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon 90 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Should either party default in the performance of any of the terms or conditions of this Agreement, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this Agreement shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.5 Regardless of how this Agreement is terminated, Registrar shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Registrar, or provided to Registrar, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Registrar in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Registrar's sole cost and expense. Payment of compensation due or to become due to Registrar is conditioned upon delivery of all such documents, if requested.

7.6 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Registrar shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Registrar to submit its claims within said forty-five (45) calendar days

shall negate any liability on the part of City and constitute a **Waiver** by Registrar of any and all right or claims to collect moneys that Registrar may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.7 Upon the effective date of expiration or termination of this Agreement, Registrar shall cease all operations of work being performed by Registrar or any of its subcontractors pursuant to this Agreement.

7.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Registrar for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement 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.

If intended for City, to:

City of San Antonio
Office of Risk Management
Attn: Debra Ojo, Director
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Registrar, to:

ABS Quality Evaluations
1701 City Plaza Drive
Spring, Texas 77389

IX. NON-DISCRIMINATION

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

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Registrar shall furnish copies of all required endorsements and completed certificate(s) of insurance to the

City's Office of Risk Management, which shall be clearly labeled "***ABS Management System Registrar***" 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. City will not accept a memorandum of insurance or binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this agreement until such certificate and endorsements have been received and approved by City's Office of Risk Management. No officer or employee, other than the Director of City's Office of Risk Management, shall have authority to waive this requirement.

10.2 City reserves the right to review the insurance requirements of this article during the effective period of this agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 A Registrar's financial integrity is of interest to City; therefore, subject to Registrar's right to maintain reasonable deductibles in such amounts as are approved by City, Registrar shall obtain and maintain in full force and effect for the duration of this agreement, and any extension hereof, at Registrar'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 2. Employers' Liability	Statutory Limits \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Products/completed operations c. Personal/Advertising Injury d. Contractual Liability	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 a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability – Claims made policies are 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.

10.4 Registrar agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Registrar herein, and provide a certificate of insurance and endorsement that names Registrar and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Registrar. Registrar shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Registrar shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Registrar shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Office of Risk Management
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.7 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Registrar shall provide a replacement certificate of insurance and applicable endorsements to City. City shall have the option to suspend Registrar's performance should there be a lapse in

coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.

10.8 In addition to any other remedies City may have upon Registrar's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Registrar to stop work hereunder, and/or withhold any payment(s) which become due to Registrar hereunder until Registrar demonstrates compliance with the requirements hereof.

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

10.10 It is agreed that Registrar's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this agreement.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.12 Registrar and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 REGISTRAR 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 REGISTRAR'S activities under this Agreement, including any acts or omissions of REGISTRAR, any agent, officer, director, representative, employee, Registrar or subcontractor of REGISTRAR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT REGISTRAR 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.

11.2 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. REGISTRAR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or REGISTRAR known to REGISTRAR related to or arising out of REGISTRAR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at REGISTRAR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving REGISTRAR of any of its obligations under this paragraph.

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

11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of REGISTRAR, 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 REGISTRAR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Registrar shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Registrar. Registrar, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Registrar intends to use the following subcontractors in the performance of this Agreement: _____. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 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 Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Registrar. City shall in no event be obligated to any third party, including any subcontractor of Registrar, for performance of

services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Registrar may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Registrar shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Registrar, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Registrar assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Registrar shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Registrar shall in no event release Registrar from any obligation under the terms of this Agreement, nor shall it relieve or release Registrar from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Registrar covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Registrar shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Registrars; that the doctrine of "respondeat superior" shall not apply as between City and Registrar, its officers, agents, employees, contractors, subcontractors and Registrars, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Registrar. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Registrar under this Agreement and that the Registrar has no authority to bind the City.

XIV. RESERVED.

XV. CONFLICT OF INTEREST

15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with 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 or her spouse, sibling, parent, child or other family

- member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, Registrar warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Registrar further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Registrar. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then 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 Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Registrar warrants and certifies that Registrar and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Registrar shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE & LEGAL FEES

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF ATTACHMENTS

The attachments listed below are an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit 1 City's Request for Proposal
Exhibit 2 Registrar's Proposal

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

27.1 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.

27.2 "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.

27.3 "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.

27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

**ABS QUALITY EVALUATIONS,
INC.**

(Signature)

Printed Name: _____
Title: _____
Date: _____

DocuSigned by:
Nathan Stellman
A5C2EE51FD9248D...

(Signature)

Printed Name: Nathan Stellman
Title: Business Development Manager
Date: 3/15/2019

Approved as to Form:

Krista Cover
Assistant City Attorney