

**PROFESSIONAL SERVICES AGREEMENT
FOR
INSURANCE BROKER OF RECORD & CONSULTING SERVICES**

This Agreement (hereinafter referred to as "Agreement") is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "City"), a Texas Municipal Corporation acting by and through its City Manager or City Manager's designee and SOGO Wealth & Risk Management (hereinafter referred to as "Consultant"), a limited liability company chartered under the laws of the State of Texas, acting by and through its Partner Joshua R. Hernandez, both of which may be referred to herein collectively as "Parties", pursuant to Ordinance No. _____ passed and approved on _____.

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:

- 1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 "Director" shall mean the City's Director of Risk Management.
- 1.3 "Consultant" is defined in the preamble of this Agreement and includes its successors.

II. TERM

- 2.1 The term of this Agreement shall be for a period of three (3) years beginning August 20, 2020 and ending on August 19, 2023, unless renewal and extension or earlier termination occurs pursuant to any other provision contained in this Agreement.
- 2.2 At City's option, this Agreement may be renewed and extended beyond the date stated above under the same terms and conditions for up to two (2) additional one (1) year periods. All renewals shall in writing and signed by the City Manager, City Manager's designee, or the Director of Risk Management, subject to and contingent upon appropriation of funds and expenditures due hereunder. Approval of San Antonio City Council shall not be required for renewals upon the same terms and conditions.
- 2.3 The City may terminate this agreement at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of City's budget for each fiscal year. Any additional contract period beyond the initial term set forth in 2.1 is subject to

and contingent upon subsequent appropriation.

III. SCOPE OF SERVICES

- 3.1 Consultant agrees to provide the services described in this Article III, entitled Scope of Services, in exchange for the compensation described in Article V. Compensation to Consultant.
- 3.2 Broker of Record. Consultant shall provide Broker of Record services, including but not limited to the following:
 - 3.2.1 Assist City in the analysis and design of optimal insurance coverage and keep City informed of significant market conditions that may affect its insurance programs by providing early warning of pending rate, coverage or renewal problems, including significant changes in the financial status of insurers; shall keep City apprised of market forecasts prior to each renewal; and shall advise City about pricing, service trends, availability of markets and the longer term direction of the market and particular insurers.
 - 3.2.2 Work closely with City to develop Market Requests to secure current insurance policies, as well as other potential excess and primary policies.
 - a. Assist in the preparation of detailed underwriting submission data, statements of values, specifications, loss summaries, and other information required by underwriters. Marketing shall include, but not be limited to, development of insurance specifications and underwriting criteria, development of Requests for Quotes (in accordance with Chapter 252 of the Texas Local Government Code) from insurance companies, canvassing insurance markets, reviewing suitable manuscript policies, and conducting negotiations on behalf of the City to secure the broadest coverage at the best available cost.
 - 3.2.3 Provide unbiased information regarding the most advantageous insurance markets and insurance coverage options for selection by City.
 - 3.2.4 Assist City in the analysis and design of insurance policy wording, and structure insurance programs to eliminate gaps and overlaps in coverage and recommend limits and coverages to provide City with the greatest amount of protection. Consultant shall provide City with a copy of submissions for presentation to markets prior to their release.
 - 3.2.5 Review responses along with City and assist in the selection of insurance providers, and provide City with a written explanation of the basic structure of each policy, including coverage, exclusions, terms, analysis of coverage scope, cost, services, and other essential information in a format suitable for use as a high level executive summary document.
 - 3.2.6 Begin renewal process at least one hundred fifty (150) days prior to renewal to ensure City's

deadlines are met. Present insurance submission to City at least one hundred twenty-five (125) days prior to renewal for review. Present all insurance proposals to City at least fifty (50) days prior to renewal, including, but not limited to, quotes, sample policy forms, and/or endorsements. Provide a marketing summary of all markets approached, quotes and indications requested and received from insurers in response to underwriting proposals. Consultant shall tender to City a recommendation for review no later than thirty (30) days prior to policy renewal. Any resulting product cannot be accepted or bound until approved by City of San Antonio City Council by passage of an ordinance; therefore, except in those cases where authority is delegated to an administrative official. All procurement of insurance shall be conducted in accordance with the requirements contained in the Texas Local Government Code Chapter 252, as it may be amended from time to time, and all applicable law.

- 3.2.7 After City's election of coverage and prior to delivery of policies, Consultant shall verify the accuracy and adequacy of all binders, policies, and endorsements to ensure that wording is complete, accurate and that coverage is in compliance with specifications negotiated. Consultant shall provide City with an outline of any issues found during the verification process, any request for clarification from the carrier, and advice regarding when and how the issue(s) are resolved. Consultant shall prepare a Schedule of Insurance report detailing coverage bound for the City immediately following placement of coverage.
 - 3.2.8 Issue binders, certificates of insurance, and other coverage documents as required.
 - 3.2.9 Assume oversight responsibilities for any insurance policies City has in place at the beginning of Consultant's contract period.
 - 3.2.10 Review premium and exposure audits from the carrier.
 - 3.2.11 Provide all carrier invoices in a timely manner and allocate premium preparing separate invoices to match the allocation, if required by City and allocating losses to applicable operating departments or strategic business units.
 - 3.2.12 Monitor financial information of the City carriers and alert the City when they fall below either Consultant's or its subcontractor's financial guideline.
 - 3.2.13 Provide City with quarterly policy registers, quarterly open items report and include a list of all upcoming renewal policies.
 - 3.2.14 Negotiate payment terms and conditions prior to binding coverage.
- 3.3 Consultant Services. SOGO shall provide Consultant Services, including but not limited to the following:

- 3.3.1 Advise City on an appropriate timeline prior to renewal of each policy to develop Market Requests and to secure any and all coverages for City's insurable risks. The objective is to place insurance coverage for the City's insurance program in accordance with the desired terms, conditions, and limits. This service involves developing insurance specifications, marketing submissions, and preparing an evaluation of responses. Consultant shall make available to City all resources at its disposal to collect, organize and review all data properly.
- 3.3.2 Act in an advisory and consulting role to City for the duration of this Agreement to ensure that the insurance carrier adheres to all terms and conditions negotiated by the carrier and the City.
- 3.3.3 Assist City in developing and evaluating proposals for programs including but not limited to Third Party property appraisers and Owner Controlled Insurance programs as required.
- 3.3.4 Participate in the continuing development and enhancement of City's overall risk management program, including recommendations on coverage changes and program adjustments as needed.
- 3.3.5 Assist in refining risk assessment and risk survey instruments utilized by City and assist in the evaluation of data collected from risk surveys to identify and measure exposures and new coverage needs.
- 3.3.6 Provide and/or collect industry survey/benchmark information upon request and assist City with evaluating data in making prudent risk management decisions.
- 3.3.7 Participate in the development (and improvement) of risk control programs for the various units, programs, and activities of City as well as in the evaluation of risk financing opportunities and alternatives which may be available to City.
- 3.3.8 Provide contract review and insurance services support and assist City in the development of standards to be used for contract provisions and review.
- 3.3.9 Keep City informed of relevant trends, regulatory changes, and new insurance products. Consultant shall review contractual risk transfer techniques when requested.
- 3.3.10 Provide assistance with forecasting and budgeting for annual claims and risk management-related expenditures, including a market forecast by line of coverage and claims trending during City's budget period.
- 3.3.11 Provide information related to claims trends that may affect City's claims costs and provide solutions to manage those trends.
- 3.3.12 Act as City's advocate in claims disputes and in obtaining loss settlements from insurance

carriers, assist in preparation of proof of loss, negotiate with insurers, resolve coverage disputes, identify and correct breakdowns in the claims-handling process. Consultant's claims advocacy services shall include, but not limited to:

- Evaluate coverage applicability on all placed insurance and reinsurance contracts
- Strategic claims reviews; such as, a quarterly claims review on all claims valued \$25,000 and up
- Advise on the presentation of the City's claims, including coverage reviews. Assist with the preparation of loss notices and review proof of loss.

3.3.13 Prepare and present a formal annual stewardship report to City on the past year's activities and future plans and goals. Within forty-five (45) days after the fiscal year end, deliver a stewardship report encompassing the following items:

- Existing program overview including coverage summaries, schedule of policies in force, premiums, ongoing claims experience and compensation review;
- Major accomplishments and significant events within the preceding year;
- Ongoing activities and initiatives in support of the City's insurance program and overall risk management goals;
- Mutually agreed upon objectives; and
- Anticipated market conditions.

3.4 Building Envelope Consultant Services. Consultant shall provide the following Building Envelope Consultant Services, as needed by City during the term of this Agreement, and any possible extensions and renewals. Consultant shall be compensated for the same in accordance with the provisions of the Agreement relating to Building Envelope Consultant Services at the amounts indicated in Attachment 2: Price Schedule incorporated herein.

3.4.1 Consultant shall provide building damage inspection services for City owned and operated buildings as identified as potentially being impacted by severe weather events or upon request.

3.4.2 Consultant will be responsible for inspecting the affected buildings for loss, creating a scope and estimate of damages, sketching, and attaching photos for submission to the Office of Risk Management. The damage report will provide the cost of to replace damaged areas of the building including the roof. The damage estimate will consider the replacement of the property to conform to the two national building codes: National Fire Protection Association Code and FM Code.

3.4.3 Consultant will deliver a storm map which overlays the storm on City's buildings in order to identify potential damaged buildings.

3.4.4 Reports shall be in hard copy and electronic format with pertinent photographs of the located damage. Consultant shall provide City a report which outlines the damage found, suspected cause of damage, reasoning, and analyses used in the estimation process to

develop Consultant's calculation of estimated replacement cost of the identified damage valuation.

3.4.5 Roof damage: Consultant will provide the number and measurement of damaged roof squares for each affected building. Consultant will recommend proper course of action with regards to the type of roof repair or replacement, if required.

3.4.6 Data File: Consultant shall provide an Excel spreadsheet with all data fields completed for all affected buildings to City in a timely manner after the date of the severe weather event.

3.5. Loss Control Services. Consultant shall provide the following Loss Control Services.

3.5.1 Consultant shall support City's loss control efforts and arrange for Loss Control and Safety Audit Services upon request and authorization by City's Director of Risk Management. Consultant shall work with City to evaluate the effectiveness of its current loss prevention program and make recommendations on how to address any deficiencies found to strengthen the overall program.

3.5.2 Consultant shall provide no less than sixty (60) hours annually for Loss Control and Safety Audit services. The cost for this minimum number of hours shall be included in the Annual Service Fee. Additional service hours beyond the minimum may be requested by City from time to time during the term of this Agreement, and any possible extensions and renewals. Consultant shall be compensated for the additional service hours in accordance with the provisions of the Agreement relating to Loss Control & Safety Audit Services at the amounts indicated in Attachment 2: Price Schedule incorporated herein.

3.5.3 Loss Control and Safety Audit Services shall include, but are not limited to:

- In-house training;
- Safety program evaluations;
- Evaluation of high-risk activities;
- Ergonomic studies;
- Job safety/hazard analysis of specific worker activities;
- Assistance in the identification and evaluation of loss exposure as requested, including comparative data regarding other public entities that share the size and scope of City; and
- Providing loss prevention strategies to reduce said exposures;
- Business continuity planning; and
- Contract safety language development and review.

3.5.4 eRisk Hub Portal. Consultant shall, at its own cost an expense, provide City with access to eRisk Hub Portal for the duration of this Agreement for three (3) users, with access 24 hours per day, 7 days per week. eRisk Hub Portal is a private Web-based service, founded and managed by NetDiligence, designed to help manage cyber and privacy risk. The eRisk Hub

provides news, content, and services across a broad range of disciplines, including legal and regulatory compliance, IT security, privacy, disaster recovery and business continuity, computer forensics and public relations. Key features of the eRisk Hub include:

- **Breach Coach™** - Breach Coach service, staffed by attorneys who are certified privacy professionals, provides immediate triage assistance in the event of a breach;
- **News center** – with cyber risk stories, security and compliance blogs, security news, risk management events, and helpful industry links;
- **Learning center** – containing best practices articles and white papers written by leading technical and legal professionals on compliance, network security, privacy, and breach recovery; and
- **eRisk resources directory** – directory of security consultants, PCI and FACTA specialists, forensic investigators, e-discovery specialists, with information about their services, pricing, and key personnel.

3.6 **Response Times.** Response times for routine request, such as certificates of insurance, risk reviews, etc. shall be 24 hours. Other responses shall be provided the same business day. Requests for certificates deemed urgent by City shall be handled within one hour.

3.7 **Market Trend Reports.** Consultant shall provide City with a copy of each of its, and its subcontractors, publications and reports to keep City informed of current market trends to the extent the same publications and reports are provided to similarly situated clients, included but not limited to Quarterly Insurance Market Reports, Limits of Liability Reports, Risk Alerts, Casualty Cost of Risk Reports, State of the Property Marketplace.

3.8 **CyberSure®** (a proprietary USI Southwest product). Consultant shall obtain user access to CyberSure® from its subcontractor, USI Southwest, Inc., on behalf of City for four (4) users for CyberSure®, a web based risk management solution tool for the duration of this Agreement, including all renewals, at no additional charge. Using CyberSure®, City may:

- Change and request to add or delete locations, vehicles, drivers, equipment and more;
- Apply for new coverage and renew existing coverage;
- Access a summary of your insurance program;
- Report claims and obtain a history of your claim reports;
- Track incoming and outgoing certificates of insurance with our online certificate request forms and our certificate insurance tool;
- Request motor vehicle reports;
- Access a variety of useful worksheets and checklists;
- Manage City's fleet with online forms and resources;
- Available 24 hours a day, 7 days a week, and 365 days a year; and
- Print insurance certificates through CyberSure®.

3.9 **Surety Services.** Consultant shall provide the following services, if request by City:

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- Financial analysis and benchmarking;
- Bond approval and execution;
- Contract review and analysis;
- Bond placement and negotiation;
- Indemnity analysis and negotiation;
- Pre-claim bond mitigation;
- Strategies to increase surety capacity and reduces surety cost;
- Surety submission preparation; and
- Bond form language review and analysis.

3.10 Additional Services. Consultant shall provide the following additional services:

- 3.10.1 Regulatory review and compliance services;
- 3.10.2 Risk retention analysis;
- 3.10.3 Program comparison and cash flow modeling; and
- 3.10.4 Benchmarking.

3.11 All work performed by Consultant 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 Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article IX. Termination, in whole or in part, should Consultant'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. City shall notify Consultant in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

IV. GENERAL ASSURANCES

- 4.1 Consultant covenants and agrees to perform all services described in this Agreement in a workmanlike and professional manner with a high degree of care to ensure accuracy and timeliness. Consultant shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.
- 4.2 Consultant agrees to employ, at its own expense, all personnel required to perform the services described in this Agreement. Personnel employed by Consultant shall neither be employees of nor have any contractual relationship with the City. All Consultant personnel engaged in providing services under this Agreement shall be fully qualified and shall be authorized or licensed to perform such work as required.

V. COMPENSATION TO CONSULTANT

- 5.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by the Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant the amount(s) as follows, and further evidenced in Attachment 2: Price Schedule incorporated herein:
- 5.1.1 City shall pay Consultant \$150,000 annually for all services identified in Article III. Scope of Services performed during the original contract term, except for those services identified below.
 - 5.1.2 City shall pay Consultant \$150,000 annually for all services identified in Article III. Scope of Services performed for the first renewal term, if renewed, except for those services identified below.
 - 5.1.3 City shall pay Consultant \$150,000 annually for all services identified in Article III. Scope of Services performed for the second renewal term, if renewed, except for those identified below.
 - 5.1.4 City shall pay Consultant in accordance with the provisions of this Agreement at the amounts indicated in Attachment 2: Price Schedule, for Building Envelope Consultant Services performed during the original contract term, if City exercises its option to require Consultant to perform these services.
 - 5.1.5 City shall pay Consultant in accordance with the provisions of this Agreement at the amounts indicated in Attachment 2: Price Schedule, for Building Envelope Consultant Services performed for the first renewal term, if renewed, and if the City exercises its option to require Consultant to perform these services.
 - 5.1.6 City shall pay Consultant in accordance with the provisions of this Agreement and the amounts indicated in Attachment 2: Price Schedule, for Building Envelope Consultant Services performed for the second renewal term, if renewed, and if the City exercises its option to require Consultant to perform these services.
 - 5.1.7 City shall pay Consultant in accordance with the provisions of this Agreement and the amount indicated in Attachment 2: Price Schedule, for Loss Control & Safety Audit Services performed during the original contract term. Consultant shall provide no less than 60 hours annually for said services to be included in the Annual Service Fee. If City exercises its option to require Consultant to provide additional hours beyond the minimum, additional hours shall be provided by Consultant at the rate of \$165 per hour.
 - 5.1.8 City shall pay Consultant in accordance with the provisions of this Agreement and the amount indicated in Attachment 2: Price Schedule, for Loss Control & Safety Audit Services

performed during the first renewal term, if renewed. Consultant shall provide no less than 60 hours annually for said services to be included in the Annual Service Fee. If City exercises its option to require Consultant to provide additional hours beyond the minimum, additional hours shall be provided by Consultant at the rate of \$165 per hour.

5.1.9 City shall pay Consultant in accordance with the provisions of this Agreement and the amount indicated in Attachment 2: Price Schedule, for Loss Control & Safety Audit Services performed during the second renewal term, if renewed. Consultant shall provide no less than 60 hours annually for said services to be included in the Annual Service Fee. If City exercises its option to require Consultant to provide additional hours beyond the minimum, additional hours shall be provided by Consultant at the rate of \$165 per hour.

5.2 Consultant shall invoice City as follows:

5.2.1 Consultant shall submit monthly invoices in arrears in the amount of \$12,500 for all services provided in Article III. Scope of Services, excluding Building Envelope Consultant Services and additional Loss Control Consulting Services beyond the minimum annual 60 hours.

5.2.2 Consultant shall submit monthly invoices in arrears for any Building Envelope Consultant Services utilized by City and any additional Loss Control Consulting Services beyond the minimum annual 60 hours utilized by City,

5.2.3 Consultant 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.

5.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 5.1 above. Total payments to Consultant cannot exceed that amount set forth in section 5.1 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 therefor.

5.4 Final acceptance of work products and services require written approval by City, by and through Director. Payment will be made to Consultant 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 Consultant, for the payment of any monies or the provision of any goods or services.

5.5 Pursuant to the Texas Local Government Code §252.024, Selection of Insurance Broker, Consultant shall not receive any other remuneration from any other source. Consultant shall not accept commissions, gifts, entertainment, item of material value, or other incentives, or compensation of

any kind from third parties for placement of coverage.

VI. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

- 6.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant. City acknowledges and agrees that Consultant's templates, models, and applications used in producing the deliverables required by this Agreement are proprietary to Consultant.
- 6.2 Consultant 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.

VII. RECORDS RETENTION AND ACCESSIBILITY

- 7.1 Consultant 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 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.
- 7.2 Consultant 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 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, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant 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 Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.
- 7.3 Consultant shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal and state law. Consultant shall establish a method to secure the confidentiality of documents and information that Consultant may have access to in accordance with the applicable federal, state, and local laws, rules, and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.

- 7.4 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Consultant under this Agreement shall be disclosed or made available to any individual or organization by Consultant without the express prior written approval of City. Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VIII. PUBLICATION

- 8.1 In order to use any advertising relating to business underwritten and/or developed for City, Consultant must obtain approval by City at least ten (10) business days prior to such use.

IX. TERMINATION

- 9.1 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.

- 9.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article X. Notice.

- 9.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article X. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

9.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XIV. Assignment and Subcontracting;

9.3.2 Any material breach of the term of this Agreement, as determined solely by City.

- 9.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 9.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article X. Notice, to cure such default. If Consultant fails to cure the default within such thirty (30) day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

9.4.1 Failure to comply with the terms and conditions stated in Attachment 1 – SBEDA Program

Compliance;

9.4.2 Bankruptcy or selling substantially all of company's assets;

9.4.3 Failing to perform or failing to comply with any covenant herein required; or,

9.4.4 Performing unsatisfactorily.

9.5 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.

9.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as City may designate, at no additional cost to City, all City-provided documents, papers, records, charts, reports, and any final reports produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VII. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City in accordance with Article X. Notice, and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested by City. Any City funds held in any escrow account(s) shall be returned to City within 30 calendar days after the effective termination date.

9.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant 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 Consultant 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 Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

9.9 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 Consultant for any default hereunder or other action.

X. NOTICE

10.1 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, TX 78283-3966

If intended for Consultant to:

Joshua R. Hernandez, Partner
7330 San Pedro, Suite 206
San Antonio, Texas 78216

XI. INTELLECTUAL PROPERTY

11.1 Intellectual Property. Consultant agrees to abide by the following regarding intellectual property rights:

- 11.1.1** Consultant shall pay all royalties and licensing fees. Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.
- 11.1.2** Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately:
- a. obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
 - b. alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
 - c. reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.
- 11.1.3** Consultant further agrees to:

- a. assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b. assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- a. Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
- b. the Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim,
- c. the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within fifteen (15) days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

11.2 Ownership and Licenses. In accordance with Texas law, Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Consultant pursuant to the resulting contract shall be the subject of any copyright or proprietary claim by Consultant.

11.3 The term "local government record" as used in this document means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

11.4 Consultant acknowledges and agrees that all local government records, as described in this document, produced in the course of the work pursuant to this Agreement, will belong to and be the property of City. Consultant will be required to turn over to City, all such records as required by said contract. Consultant shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

- 11.5 Consultant agrees to comply with all applicable federal, state, and local law, rules and regulations governing documents and ownership, access and retention.

XII. INSURANCE

- 12.1 Prior to the commencement of any work under this Contract, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the **Office of Risk Management**, which shall be clearly labeled "**RFP – Insurance Broker of Record**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the **Office of Risk Management**. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 12.2 The 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 whereby City may incur increased risk.
- 12.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Consultant'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	\$1,000,000/\$1,000,000/\$1,000,000
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	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

f. Damage to property rented by you	f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

12.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant 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

12.6 Consultant 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.
- 12.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant'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.
- 12.8 In addition to any other remedies the City may have upon Consultant'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 Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- 12.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this contract.
- 12.10 It is agreed that Consultant'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.
- 12.11 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.
- 12.12 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIII. INDEMNIFICATION

- 13.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor**

of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

In addition, Consultant agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

- 13.2 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 Agreement 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.
- 13.3 Defense Counsel. City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant 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 Contract. 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.
- 13.4 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.

XIV. ASSIGNMENT AND SUBCONTRACTING

- 14.1 Consultant 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 Consultant. Consultant, its employees, or its subcontractors shall perform all necessary work.

- 14.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: USI Southwest, Inc. Any deviation from this subcontractor list, whether in the form of deletions, additions, or substitutions shall be approved by Director, as evidenced in writing, signed and agreed to by Parties prior to the provision of any services by said subcontractor. Changes may be made to Consultant's SBEDA Utilization with the written approval of Director and City's SBEDA Program Manager.
- 14.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by 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 Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.
- 14.4 Except as otherwise stated herein, Consultant shall not assign, sell, 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, to any other party without prior written consent of Director, as evidenced in writing signed and agreed to by Parties. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee, or subcontractor.
- 14.5 If approved, Consultant's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any Agreement with Consultant arising from or in relation to this Agreement, nor shall any involuntary transfer or assignment results in a transfer of any rights conferred by this Agreement. Consultant shall indicate this limitation in all Agreements with approved subcontractors.
- 14.6 Any such attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void *ab initio*, and shall confer no rights on the purported assignee. Should Consultant assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this Agreement, the City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City which City sustains as a result of such violation.
- 14.7 In no event shall such written consent for a change of subcontractor if obtained, relieve Consultant from any and all obligations hereunder or change the terms of this Agreement.

XV. INDEPENDENT CONTRACTOR

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

XVI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 16.1 Consultant shall comply with the requirements of the City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No, 2010-06-17-0531, as amended), as further described in **Attachment 1** hereto (the "SBEDA Requirements") for City funds being used in the performance and accomplishment of this Agreement.

XVII. CONFLICT OF INTEREST

- 17.1 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 .
- 17.2 Pursuant to the subsection above, Consultant 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. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVIII. AMENDMENTS

- 18.1 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 Consultant. City Manager, his/her designee, or Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, however, any amendments that require additional appropriation of funds shall be subject to approval by the City Council, as evidence by passage of an ordinance.

XIX. SEVERABILITY

- 19.1 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.

XX. LICENSES/CERTIFICATIONS

- 20.1 Consultant warrants and certifies that Consultant 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.

XXI. COMPLIANCE

- 21.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.
- 21.2 As a party to this contract, Consultant 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.

XXII. NONWAIVER OF PERFORMANCE

- 22.1 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 XVIII. 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.

XXIII. LAW APPLICABLE & LEGAL FEES

- 23.1 **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.**
- 23.2 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.
- 23.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXIV. LEGAL AUTHORITY

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

XXV. PARTIES BOUND

- 25.1 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.

XXVI. CAPTIONS

- 26.1 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.

XXVII. INCORPORATION OF ATTACHMENTS

- 27.1 Each of the Attachments listed below is 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, with this document taking priority over all Attachments:

Attachment 1: SBEDA Program Compliance.

Attachment 2: Price Schedule

XXVIII. RESERVED

XXIX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 29.1 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.
- 29.2 "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.
- 29.3 "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.
- 29.4 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.

XXX. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

- 30.1 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 §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXXI. ENTIRE AGREEMENT

31.1 This Agreement, together with its authorizing ordinance and its attachments, 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 is in writing, dated subsequent to the date hereto and duly executed by the parties, in accordance with Article XVIII. Amendments.

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

CITY OF SAN ANTONIO

SOGO WEALTH & RISK MANAGEMENT

(Signature)

Printed Name: _____
Title: _____
Date: _____

(Signature)

Printed Name: Joshua R. Hernandez
Title: Partner
Date: 7/7/20

Approved as to Form:

Assistant City Attorney

Attachment 1
SBEDA Program Compliance

Attachment 2
Price Schedule