

AN ORDINANCE **101879**

AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES CONTRACT WITH PADGETT, STRATEMANN & COMPANY, L.L.P., IN AN AMOUNT NOT TO EXCEED \$50,000.00, TO PROVIDE END OF FISCAL YEAR SUPPORT SERVICES.

* * * * *

WHEREAS, the City desires to hire Padgett, Stratemann & Company, L.L.P (“Consultant”) to provide staff augmentation services to the City in order to facilitate the reconciliation of the City’s financial accounts and provide additional accounting services as needed; and

WHEREAS, Consultant will assist with the reconciliation of various accounts, verification of the accuracy and completeness of financial data transferred to the SAP information systems accounting application, verifying and documenting the flow of data through SAP, and other services that may be required; **NOW THEREFORE:**

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

SECTION 1. The City Manager, her designee, and the Director of the Department of Finance are hereby authorized 45 calendar days to execute a professional services contract with Padgett, Stratemann & Company, L.L.P to provide the accounting services described above at the rate of \$85-\$115 per hour, with a maximum expenditure not to exceed \$50,000, subject to the approval of the City Attorney, for a term beginning December 15, 2005 and ending February 16, 2006. In the event the parties are unable to execute a contract containing terms substantially in accordance with those set forth in Exhibit A, attached hereto and made a part hereof for all purposes, within the specified time period, authority to execute a professional services contract is subject to subsequent City Council action.

SECTION 2. Funds for this expenditure are available in the General Fund 11001000, Fund Center 0703010000, Financial Accounting, as part of the FY06 Budget. Payment not to exceed \$50,000.00 is authorized to Padgett Stratemann & Company, LLP, from Fund 11001000, Cost Center 0703010001, CONTROLLER'S OFFICE, General Ledger 5201040, Fees to Professional Contractors, and shall be encumbered upon issuance of a purchase order.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the Interim City Manager or his designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

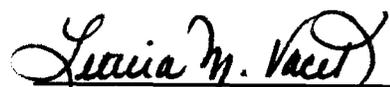
PASSED AND APPROVED on December 15, 2005.



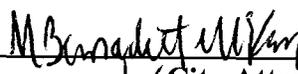
M A Y O R

PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM: 

for City Attorney

Agenda Voting Results

Name: 47.

Date: 12/15/05

Time: 03:27:01 PM

Vote Type: Multiple selection

Description: An Ordinance authorizing the execution of a professional services contract with Padgett Stratemann & Company, LLP for end of fiscal year support services in an amount not to exceed \$50,000.00. [Presented by Milo Nitschke, Director, Finance; Melissa Byrne Vossmer, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

E X H I B I T A

PROFESSIONAL SERVICES CONTRACT

STATE OF TEXAS

COUNTY OF BEXAR

This Contract is made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas home-rule municipal corporation acting by and through its Interim City Manager, or his designee, and Padgett Stratemann & Company, ("Consultant"), both of whom may be referred to collectively as the "Parties".

WHEREAS, the City wishes to engage an accounting firm to provide staff augmentation services to the City in order to facilitate in fiscal year-end accounting support, reconciliations of the City's financial accounts, and provide additional services as needed;

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the parties here 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 "Consultant" is defined in the preamble of this Agreement and includes its successors and permitted assigns.

1.3 "Director" means the Director of City's Finance Department.

II. TERM

2.1 This Agreement shall commence on December 15, 2005 and shall terminate on February 15, 2006, unless extension or earlier termination shall occur pursuant to any of the provisions of this Agreement.

III. SCOPE OF SERVICES

3.1 Consultant shall provide staff augmentation services to the City in order to facilitate the fiscal year-end closing process, perform any reconciliations of the City's financial accounts, and provide additional services as needed. Consultant shall initially provide the services of Tom Tarrillion (Accountant) to perform the scope of services in the contract. In the event Accountant is not able to perform his services under this contract for any reason for three consecutive business days, Consultant shall provide a staff accountant with a minimum of five years of accounting experience. The accountant shall be available at least 40 hours a week. Said accountant will be and remain the employee of Consultant, performing their work independently, but as assigned by Director or his designee. At City's and Consultant's discretion and based on availability of staff accountant, said accountant may be required to work more hours, and on site with City staff. Any accountant working on site with City staff shall be provided an adequate work space, hardware and software, and access to City records necessary to perform the tasks assigned. The Consultant may also provide accountants with less than five years experience, subject to Director's approval. City shall have the right to reject any accountant. Upon notice of such rejection, Consultant shall have a reasonable time, not to exceed 2 weeks, to provide replacement staff. If Consultant is unable to provide staff that is satisfactory to Director, City may terminate this Agreement upon written notice, in accordance with Article VII. Termination. If Consultant is unable to expeditiously supply adequate personnel for all aspects of the work to be performed hereunder, as determined solely by Director, City may contract with another Consultant to perform any portion of the work contemplated herein.

3.2 Consultant shall perform tasks as required by the Director, or designee, to assist City staff in the following areas:

3.2.1 Assisting and performing various types of reconciliations;

3.2.2 Assistance with verification of the accuracy and completeness of the financial data transferred from City's FAMIS application to its SAP information systems accounting application ("SAP");

3.2.3 Assistance in completion of various financial statements and analysis of said statements; and

3.2.4. Other services that may be required .

3.3 Due to the nature of the work to be performed, and the short time frame within which it must be accomplished, Consultant shall provide its best efforts to perform specific tasks related to the services set forth above within the time frames specified by Director, or his designee, at the time the specific task is assigned, and shall provide such reports or documents as may be required by said Director, or his designee, as deliverables.

3.4 City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined by Director and Consultant, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed fifty thousand dollars (\$50,000.00) as total compensation, to be paid to Consultant as set out in Section 4.2 and 4.3 below.

4.2 City shall pay Consultant at the rate of \$115.00 per hour for the services of Accountant, and City shall pay Consultant at the rate of \$80.00 - \$115.00 per hour for any other staff accountant assigned by Consultant and performing in accordance with Article III Scope. The specific rates for any accountant other than Accountant will be approved by the Director. Consultant shall submit invoices supported by time sheets showing the dates worked, hours worked, nature of work performed, and the name of the individual performing the services. Consultant shall submit time sheets and invoices to the City biweekly. City shall pay all approved invoices within 15 days of receipt.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City, except for parking costs and any other expenses with the prior written approval of the Director. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant 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 The approval official shall be 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.

4.5 Parties agree not to actively solicit the employees of the other Party during the term of this Agreement and for six months following termination hereof. This provision shall not prohibit a Party from hiring the employee of the other, should said employee respond to a general public advertisement for employment issued by a Party.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all records, 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; and no such writing, document or information shall be the

subject of any copyright or proprietary claim by Consultant.

5.2 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 records, writings, documents and information as City desires, without restriction.

VI. RECORDS

6.1 Consultant 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 Consultant shall return or submit all documents produced as a result of services provided under this agreement to the Director or designee immediately after the engagement is complete.

6.3 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.

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 or Consultant upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City or Consultant 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:

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

7.3.2 Any material breach of the terms of this Agreement.

7.4 Additional Termination For Cause by City. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, should Consultant be unable to provide staff that is satisfactory to Director, in accordance with Section 3.1 herein.

7.5 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.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect 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 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 VI. Records Retention. Notwithstanding the foregoing, City shall compensate Consultant in accordance with Article IV for any time required for transitional work and closeout procedures. Any record transfer shall be completed within ten (10) calendar days of a written request by City 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.

7.7 Within thirty (30) 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. City shall pay all approved invoices and monies owed within 15 days of receipt of related invoices. Failure by Consultant to submit its claims within said thirty (30) 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.

7.8 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.

7.9 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.

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
Attn: Lena Ellis
Finance Department
131 W. Nueva
San Antonio, Texas 78207
P.O. Box 839966
San Antonio, Texas 78238-3966

If intended for Consultant, to:

Padgett Stratemann and Company, LLP
Attn: Santos Fraga
100 N.E. Loop 410, Suite 1100
San Antonio, Texas 78216

IX. [Reserved]

[This section is intentionally left blank.]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the City's Finance Department, attention Lena Ellis, and City Clerk's Office, and which shall be clearly labeled "Accounts Receivable Research & Consulting" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's Finance

Department and the City Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement. Upon approval by City of the Consultant's initial insurance policy, any subsequent changes requested by the City to said policy which increases the Consultant's cost will be reimbursed to the Consultant by the City.

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

10.3 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 Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

1. Workers' Compensation ** Employers' Liability **	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors *c. Products/completed operations d. Personal Injury e. Contractual Liability *g. Broad form property damage, to include fire legal 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 \$50,000
3. Professional Liability (Claims Made Form)	\$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.
* If Applicable as determined by City's Risk Manager	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies).

Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. Consultant has the right to terminate contract if replacement cannot be secured at comparable prices, if the City does not waive replacement requirement. Copies of policies shall be provided at no cost to City.

10.5 Consultant agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds 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 and employers' liability policies will provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Consultant shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Consultant knows of said change in advance, or ten (10) days notice after the change, if the Consultant did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

10.7 If Consultant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Consultant to maintain said insurance or secure such endorsement. 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.

10.8 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 Agreement.

10.9 It is agreed that Consultant's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

XI. INDEMNIFICATION

11.1 Consultant covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers, and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant's activities under this Contract, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, Consultant or subcontractor of Consultant, and their respective officers, agents, employees, directors, and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers, or employees. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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 INDEMNIFICATION 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.

11.3 Consultant shall promptly advise the City in writing of any claim or demand against the City or Consultant known to Consultant, related to or arising out of Consultant's activities under this Contract. In turn, City shall promptly advise Consultant in writing of any such claim or demand against the Consultant or City known to City.

11.4 City and Consultant acknowledge and agree that, to the extent of any joint liability, it is the parties' intention, by this provision, that each party shall pay for its respective attorney's fees and costs of defense in the event of any such claim and/or lawsuit.

11.5 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.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 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.

12.2 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: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, 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 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.

12.4 Except as otherwise stated herein, Consultant 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 Director, as evidenced in writing. 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.

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 Consultant 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 Consultant 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 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.

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City. Consultant's staff accountant(s) provided hereunder will remain the employees of Consultant, performing their work independently, but as assigned by Director or his designee. The doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Consultant under this Agreement and that Consultant have no authority to bind City.

13.2 Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by City, what instruction or direction is provided by City, Consultant, and those persons designated by it to provide services shall not be deemed employees of City, and shall not be entitled to wages or benefits from City, other than the compensation provided herein.

XIV. RESERVED

[This section is intentionally left blank.]

XV. CONFLICT OF INTEREST

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in

which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 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.

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 Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance. Notwithstanding the foregoing, subject to the mutual agreement of the parties, the Director is may extend the term of this Agreement for up to 90 days, and/or modify the scope, so long as no change to the compensation provided for herein is required. Such extension shall be in writing and signed by Director and Consultant, without requiring additional City Council approval.

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

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.

XIX. COMPLIANCE

Consultant 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

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.

XXII. LEGAL AUTHORITY

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.

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. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance, constitutes 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.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:

Title: _____
Date: _____

Title: _____
Date: _____

Approved as to Form:

City Attorney