

AN ORDINANCE 2006-02-23-0242

AUTHORIZING NEGOTIATION AND EXECUTION OF PROFESSIONAL SERVICES AGREEMENTS WITH BAKER BOTTS, L.L.P., BROWN CONSULTING, DENTON, NAVARRO, ROCHA & BERNAL, P.C., HOLLAND & KNIGHT L.L.P., CHRISTOPHER S. SHIELDS, P.C. AND TX CAPITOL CONSULTING GROUP, L.L.C FOR STATE REPRESENTATION SERVICES, FOR A TOTAL MONTHLY AMOUNT OF \$30,300.00, BEGINNING UPON EXECUTION OF THE AGREEMENTS AND ENDING SEPTEMBER 30, 2007, WITH AN ADDITIONAL TWO-YEAR EXTENSION, SUBJECT TO CITY COUNCIL APPROVAL; AND PROVIDING FOR PAYMENT.

* * * * *

WHEREAS, the most recent contracts for state representation services expired on September 30, 2005, and in June of 2005 staff from External Relations, Contract Services and the City Attorney's Office began working to develop a Request for Proposals ("RFP") for state representation services; and

WHEREAS, the scope of services requested by the RFP was fairly consistent with that of the past contracts and respondents not capable of providing the entire requested scope of services were encouraged to partner with other entities prior to the submission of a proposal; and

WHEREAS, the RFP was released on August 1, 2005 and advertised in the *San Antonio Business Journal*, posted on the City's website and a link to it was emailed to approximately 40 prospective respondents from across the state; and

WHEREAS, on October 10, 2005, the Evaluation Panel met and reviewed all seven (7) of the proposals received and during the week of October 17, 2005, the Evaluation Panel interviewed five firms; and

WHEREAS, upon completion of the staff evaluation, the Baker Botts team, consisting of members from Baker Botts, L.L.P., Denton, Navarro, Rocha & Bernal, P.C. and Brown Consulting, was ranked highest; and

WHEREAS, soon afterward, Councilman Chip Haass asked staff if the top scoring respondent produced the best team to represent the City next session, or whether there was a better option available to the City and External Relations staff responded with a separate recommendation that included individuals from the top two scoring teams; and

WHEREAS, at the City Council meeting held on February 23, 2006, Councilman Art Hall, District Eight, moved to amend this Ordinance to include the services of James Jonas with the firm of Holland & Knight L.L.P. and Councilman Kevin Wolff, District Nine, moved to amend this Ordinance to include the services of Harold Oliver with TX Capitol Consulting Group, L.L.C. and both amendments passed; and

WHEREAS, each of the individuals recommended by this Ordinance has significant experience in issues important to the City, such as appropriations, economic development, natural resources, telecommunications reform, land use and municipal law; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to negotiate and execute professional services agreements with Baker Botts, L.L.P., Brown Consulting, Denton, Navarro, Rocha & Bernal, P.C., Holland & Knight L.L.P., Christopher S. Shields, P.C. and TX Capitol Consulting Group, L.L.C for state representation services, for a total monthly amount of \$30,300.00, beginning upon execution of the agreements and ending September 30, 2007, with additional two-year extensions, subject to City Council approval. A draft professional services agreement is attached to this Ordinance as Exhibit I. Upon final execution, a copy of each professional services agreement, setting out basic terms including fees, will be attached to this Ordinance.

SECTION 2. Funds for this expenditure are available in Fund 11001000, General Fund, Cost Center 0801010001, INTERGOVERNMENTAL RELATIONS, General Ledger 5201040, Fees to Professional Contractors, as part of the Fiscal Year 2005-2006 budget.

SECTION 3. Payment not to exceed the contracted amount of \$212,100.00 is authorized to Baker Botts, L.L.P., Brown Consulting, Denton, Navarro, Rocha & Bernal, P.C., Holland & Knight L.L.P., Christopher S. Shields, P.C., and TX Capitol Consulting Group, L.L.C. for Fiscal Year 2005-2006 and shall be encumbered with a purchase order.

SECTION 4. Funding for the balance of this Agreement not paid during Fiscal Year 2005-2006 is contingent upon appropriations made by the City Council during the annual budget process.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance shall be effective on and after the tenth day after passage.

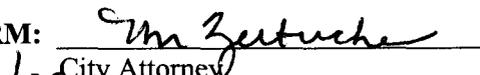
PASSED AND APPROVED this 23rd day of February, 2006.


M A Y O R
PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


for City Attorney

Agenda Voting Results

Name:

3.

Main motor

Date:

02/23/06

Time:

03:24:10 PM

Vote Type:

Multiple selection

Description: An Ordinance authorizing negotiation and execution of professional services agreements with Baker Botts, L.L.P., Brown Consulting, Denton, Navarro, Rocha & Bernal, P.C., Christopher S. Shields, P.C., and TX Capitol Consulting Group, L.L.C. for state representation services, for a total monthly amount of \$25,000.00, beginning upon execution of the agreements and ending September 30, 2007, with an additional two-year extension, subject to City Council approval; and providing for payment. [Presented by Ray Baray, Intergovernmental Manager, External Relations; Michael D. Bernard, City Attorney]

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		

Agenda Voting Results

Name: 3. Amendment 2 as presented by CM Wolff

Date: 02/23/06

Time: 03:21:40 PM

Vote Type: Multiple selection

Description:

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		

Agenda Voting Results

Name: 3, Amendment 1 as presented by CM Hall

Date: 02/23/06

Time: 03:23:40 PM

Vote Type: Multiple selection

Description:

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		

Agenda Voting Results

Name: 3. To suspend the rules

Date: 02/23/06

Time: 02:50:52 PM

Vote Type: Multiple selection

Description:

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	

Exhibit
I

**PROFESSIONAL SERVICES AGREEMENT
FOR
STATE REPRESENTATION SERVICES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 200_ and _____ by and through its _____ (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

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

I. DEFINITIONS

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

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

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

"Director" shall mean the acting director of City's External Relations Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon final execution and terminate on September 30, 2007 (hereinafter referred to as "Initial Term").

2.2 City shall have the right, in its sole discretion, to exercise one (1) two(2)-year renewal option, subject to the approval of the City Council of the City of San Antonio (hereinafter referred to as "City Council"). Said renewal option, if exercised shall begin October 1, 2007 and expire September 30, 2009.

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the

expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

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

3.2 Consultant shall represent City and identify issues to proactively address during the interim period preceding the 80th Legislative Session. Consultant shall advocate on the City's behalf during the interim session on any issues that City requires and shall be evaluated based on the performance measures set out in Exhibit A.

3.3 Consultant shall represent City during the 80th State Legislative Session and advocate on its behalf through the following:

3.3.1 Assist in the formulation and adoption by City Council of City's State Initiatives Program for the 80th Legislative Session (hereinafter referred to as "Program");

3.3.2 Secure the passage of legislative initiatives included in the Program;

3.3.3 Maintain contact and effectively communicate City Council policy positions to the Bexar County Delegation and other members of the Legislature;

3.3.4 Monitor and respond to municipally-related legislation, proposed administrative rules and regulations and other state developments not in the Program, analyze their potential impact on the City, and develop and implement strategies to support or defeat such items, as appropriate;

3.3.5 Consult with Director regarding appearances by members of the City Council or City personnel before legislative committees and administrative agencies and will arrange for appointments, as necessary; and

3.3.6 Prepare testimony and assist with the scheduling of witnesses before legislative committees.

3.4 Consultant shall, when specifically directed by City, assist in coordinating issues with the Texas Municipal League and other groups and cities.

3.5 During the legislative session, Consultant shall submit weekly written reports to the External Relations Office, in a timely manner, so as to allow City Council

to make informed decisions relative to legislative matters. Prior to commencement of the legislative session, these reports shall be submitted on a monthly basis. Consultant shall secure and furnish such detailed information as may be available on a timely basis related to Program areas and share such information with Director.

3.6 Consultant shall maintain or have access to an Austin office which will be available for performance of its duties under this Agreement (hereinafter referred to as "Consultant's Office"). Consultant's Office and support staff shall be available for all reasonable use by officials of City, when in Austin.

3.7 Consultant shall be available for regular meetings with Director and City personnel and/or the City Council Intergovernmental Relations Committee to assist in development of the Program. Consultant shall also confer with the City Manager, through Director, and other City personnel on all organizational planning and activities which have a bearing on the Program. Upon request, Consultant shall conduct briefings for the Mayor and City Council concerning legislative and regulatory matters.

3.8 Upon City's request, Consultant shall contact state agencies on City's behalf when City grant applications are under consideration by such agencies and counsel City as to the appropriate steps necessary for obtaining the most favorable consideration of such applications.

3.9 Consultant shall organize and execute a plan to build stronger relationships between the City and key members of the Legislature and their staff.

3.10 Consultant shall act under the supervision of Director. Consultant is prohibited from contacting City staff without prior coordination with the Director.

3.11 More specifically, Consultant shall advise, consult and represent City's interest with the Executive and Legislative branches of the State government and with any State agencies, departments and commissions as may be necessary to the performance of its obligations hereunder. However, Consultant will not be required to act as legal counsel or represent City in any administrative or legal proceeding, except as otherwise may be agreed upon in a separate agreement.

3.12 Consultant's principal shall be _____. Any changes in the principal person(s) assigned by Consultant to carry out the obligations under this Agreement as of the effective date of this Agreement must be approved in writing by the City Manager.

3.13 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 VII. 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.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed _____ dollars (\$_____) as total compensation, to be paid to Consultant as follows:

Insert payment terms

4.2 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 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.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be 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.

V. OWNERSHIP OF DOCUMENTS

5.1 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; 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 writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 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 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 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 said documents to City prior to or at the conclusion of said retention.

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 either party upon 10 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 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 Violation of the provisions of Section 3.10 of this Agreement.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this Section 7.4 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 fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-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.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets.

7.4.3 Failing to perform or failing to comply with any covenant herein required.

7.4.4 Performing unsatisfactorily.

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. Any record transfer shall be completed within thirty (30) 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 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.

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

8.1 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
Attn: Alejandra Lopez
External Relations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Consultant, to:

Name of Consultant
Attn: _____
Address

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the City's External Relations Department, attn: Alejandra Lopez, and City Clerk's Office, and which shall be clearly labeled "State Representation Services" 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 External Relations Department, attn: Alejandra Lopez, and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 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.

9.3 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 B+ or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

<p>1. Commercial General (public) Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises operations *b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability *f. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability 	<p>For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>3. Professional Liability (Claims Made Form)</p>	<p>\$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.</p>
<p>*If Applicable</p>	
<p>**Alternate plans must be approved by Risk Management</p>	

9.4 The City shall be entitled, upon request and without expense, 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 9.6 herein within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

9.5 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;

9.6 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
External Relations Department
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

9.7 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.

9.8 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.

9.9 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.

X. INDEMNIFICATION

10.1 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 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 performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole 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.

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.

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.

10.2 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 Agreement. 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.

10.3 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.

XI. COPYRIGHT USAGE

11.1 Consultant shall pay all royalties and licensing fees necessary for the utilization of copyrighted materials in the provision of under this Agreement. 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. Consultant shall defend all suits for infringement of any Intellectual Property rights.

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 Any subcontracting of the services to be provided under this Agreement shall be approved by the City Council, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of 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 the City Council.

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 the City Council, as evidenced by passage of an ordinance. 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; 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 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 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.

XIV. SBEDA

14.1 Consultant hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

14.2 Consultant shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Agreement, thereby meeting the percentages for participation of those groups as submitted in its proposal. Consultant's SBEDA plan, as submitted with Consultant's proposal, is attached hereto and incorporated herein by reference as Exhibit B. Consultant shall be in full compliance with this Article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Agreement, and shall remain in compliance throughout the term of this Agreement. Consultant further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Agreement, as may be approved pursuant to this Agreement, which will meet the percentages submitted in its proposal.

14.3 Consultant shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that Consultant is not in compliance with this Article, City shall give notice of non-compliance to Consultant. Consultant shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this Article. Failure to comply with this Article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Agreement, for which this Agreement may be terminated in accordance with Article VII. Termination.

14.4 In all events, Consultant shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 100873, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

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 the terms "officer" and "employee" are defined in Part B, Section 10 of City's Ethics Code, as may be amended from time to time, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or 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 parent, child or spouse; a business entity in which the officer or employee, or his or her 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. Consultant warrants and certifies, and this Agreement is made in reliance thereon, that Consultant, Consultant's officers, employees and agents are neither officers nor employees of City. Consultant further warrants and

certifies that, if required to do so, is has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

15.2 Consultant shall not represent any other parties in state initiatives on matters which involve direct competition with City, without the prior written consent of City Manager. Consultant shall be responsible for monitoring and informing City of any potential conflicts. The determination of whether a conflict exists shall be reserved solely to City.

15.3 Consultant shall disclose all new lobbying clients that retain Consultant's services during the Term and renewal option, if any, of this Agreement. Such information shall be submitted as part of the reports required by Section 3.5, above.

15.4 Consultant shall not directly participate in the political campaign of any candidate for Mayor, City Council or work on behalf of or in opposition to local referendums.

XVI. AMENDMENTS

16.1 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, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

17.1 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.

XVIII. LICENSES/CERTIFICATIONS

18.1 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.

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

20.1 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 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

22.1 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.

XXIII. PARTIES BOUND

23.1 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.

XXIV. CAPTIONS

24.1 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.

XV. INCORPORATION OF EXHIBITS

25.1 The exhibit listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and it is incorporated herein for all purposes.

XXVI. ENTIRE AGREEMENT

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

EXECUTED and AGREED to this the _____ day of _____, 2005.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
[Insert Name of Consultant]

Sheryl Sculley
City Manager

Approved as to Form:

City Attorney

Exhibit A: Performance Measures
Exhibit B: Consultant's SBEDA Plan

Attachment A

Performance Measures for the Consultant Team during the 79th Interim Legislative Session and the 80th Legislative Session

79th Interim Legislative Session

- Participate in the identification and development of a strategy for at least five targeted grant opportunities.
- Participate with policy development of Interim Committee reports on at least five of the City's top priorities.
- Assist the City with relevant state agency/commission rule making processes with issues of concern to the City.
- Attend monthly meetings with City staff and/or City Council Intergovernmental Relations Committee and provide monthly reports on interim activities.
- Build stronger relationships between the City of San Antonio and key members of the Legislature including Bexar County delegation through professional and social meetings on at least a bi-monthly basis.
- Identify and participate in at least six opportunities to have San Antonio host meetings of Interim Committees and host receptions for at three of these meetings.
- Identify opportunities for San Antonio officials to participate in at least eight public hearings by providing testimony before interim committees.
- Draft testimony and issue briefs as necessary on issues identified by City staff and/or City Council
- Communicate with the Bexar County Delegation and other members of interim committees regarding the City's interim priorities through legislative contact, both oral and written.

80th Legislative Session

- Host a luncheon in San Antonio for Bexar County Delegation members prior to the commencement of the 80th Legislative Session.
- Host a reception in Austin for legislative staff in early February.
- Identify at least fifteen opportunities for San Antonio officials to participate in public hearings by providing testimony before legislative committees.

- Communicate with the Bexar County delegation and other members of the Legislature regarding the City's priorities through legislative contact, both oral and written.
- Attend weekly meetings with City staff and/or City Council Intergovernmental Relations Committee and provide weekly written reports on the status of the City's legislative program and other relevant legislative activities.
- Assist with the advocacy of legislative endorsements in conjunction with the Texas Municipal League and/or other governmental entities when requested by the External Relations Director.
- Draft testimony, issue briefs, legislative alerts, bill language, and bill analyses as necessary on issues identified by City staff and/or City Council.