

**CONTRACT FOR
ADVERTISING, MARKETING AND
PUBLIC RELATIONS**

This CONTRACT is entered into by and between the CITY of San Antonio (hereinafter referred to as "CITY") acting by and through its CITY Manager pursuant to Ordinance No. _____ which was approved by City Council on September 1, 2011, and Proof Advertising, LLC (hereinafter referred to as "CONTRACTOR"), acting by and through duly authorized officials, WITNESSETH:

I. PURPOSE

- 1.1 The purpose of this CONTRACT is to state the terms and conditions under which CONTRACTOR shall perform services as the official advertising, marketing and public relations CONTRACTOR of CITY's Convention and Visitors Bureau ("BUREAU"). Nothing in this CONTRACT is intended to constitute CONTRACTOR as the legal agent of CITY.

II. DEFINITIONS

As used in this CONTRACT the following terms shall have the described meanings:

- 2.1 "Tearsheet" - a sample of the publication page in which advertisement ran as proof of performance.
- 2.2 "Frequency" - Average number of times households or persons viewed a given program, station or advertisement during a specific time period. This number is derived by dividing the Gross Rating Points (GRPs) by the Reach.
- 2.3 "Reach" - Unduplicated number of individuals or households exposed to an advertising medium at least once during the average week for a reported time period (also known as Cumulative Audience)
- 2.4 "Impressions" - Actual number of exposures to advertising messages within specified demographics across channels.
- 2.5 "Cooperative Program" - partnerships between the BUREAU and other private/public entities that provide effective and attractive consumer and trade cooperative advertising, promotional, and other marketing opportunities that enhance and extend awareness and exposure of the San Antonio vacation/convention message.
- 2.6 "Traffic" - distribution of final art or broadcast spots (TV, radio, online or print) sent to the appropriate publications, online channels and vendors, for publication, display or airing.
- 2.7 "Value-added merchandising" - anything given to the client by the media vendor that is over and above the purchased media.

- 2.8 "Advertising responses" - consumer request for visitor information or collateral which was driven by the advertisement they saw.
- 2.9 "Media placement" - the buying of approved media; such as magazine, newspaper, online, radio or television space/time.
- 2.10 "Intellectual property" - all plans for advertising, preliminary sketches, layouts, copy, "commercial" material, films, photographs, drawings, transcriptions, ideas, designs, processes, methods, products, discoveries, inventions, improvements, programs, writings, business methods or concepts, plans, projections and other similar items and rights thereto, including all patents, trade secrets, copyrights, and trademarks.
- 2.11 "CONTRACTOR'S Team" - those subcontractors listed in CONTRACTOR'S Response to the Request for Qualifications.
- 2.12 "Overcharges" - including, but not limited to, billing errors, costs billed that are not permitted by the CONTRACT, and any unsupported charges.

III. SCOPE OF SERVICES

- 3.1 CITY reserves the right to perform, manage and/or administer any function referenced within the Scope of Services with CITY staff at any time during the term of this CONTRACT. This may alter the amount of overall funds and projects administered by Agency and will be determined on a year-to-year basis. City reserves the right to extend its Contract for Advertising, Marketing and Public Relations with Bromley Communications, L.L.C. ("Bromley"), which expires September 30, 2011, for up to three months to allow Bromley to complete projects underway at the time of transition to CONSULTANT. Should CITY determine that such extension is necessary, CITY, in its sole discretion, shall determine which existing projects shall be handled by Bromley and which shall be transferred to CONSULTANT. It is the understanding of the parties that CITY may hire another agency to provide advertising services outside the Scope of Services of this CONTRACT.
- 3.2 With the cooperation, advice and written consent of the BUREAU Director, or through his/her staff with written authorization, and consistent with the annual scope of work ("Annual Scope of Work") in Section 9.1, which shall be mutually agreed to annually by the parties and incorporated into this CONTRACT upon completion, CONTRACTOR shall perform and/or manage the performance of the following:
- requested strategic planning,
 - project management/account management,
 - marketing across all channels (including but not limited to print, TV, radio, digital, online),
 - research,
 - creative concepts,
 - production (executions),
 - media planning,
 - media buying and evaluation,
 - trafficking and scheduling,

- public relations and
- all related accounting and reporting requirements.

CONTRACTOR services will result from BUREAU approval of campaign concepts and annual advertising program designed to augment BUREAU's efforts in carrying out its goals and objectives. CONTRACTOR may also be responsible for the solicitation, implementation and management of cooperative advertising initiated by the BUREAU. Cooperative advertising shall be performed under the direction of the BUREAU. Services not included in the Annual Scope of Work will be provided based upon project plans and incremental compensation arrangements agreed upon in advance of the commencement of such services (the "Additional Services").

3.3 Due to wide range of marketing programs, it is expected that CONTRACTOR may be called upon to subcontract various services. These services may be adjusted throughout the term of this CONTRACT and based on various strategies, including but not limited to, marketing trends, creative direction, individual campaigns, digital and online strategies, revenue partnerships, and more. CONTRACTOR shall strategically plan, integrate, manage and execute all assigned marketing projects and any subcontractors. All subcontracting shall be accomplished in the manner set forth in Article VI.

3.4 All services provided under this CONTRACT shall be performed in conformance with generally accepted industry standards that are usual and customary between a client and an advertising agency in such relationships. No work shall be undertaken and no expenditure made for reimbursement hereunder unless the concept and program have been approved in writing by the BUREAU. Such approval may only be given by the BUREAU Director or his/her designee.

3.5 Strategic Planning and Integrated Project Management:

- a. CONTRACTOR shall execute and/or manage the execution of various marketing disciplines including but not limited to:
 - a. Offline and online strategies,
 - creative concept,
 - media planning and buying,
 - production,
 - public relations, and
 - research and strategic planning
 - b. It should be noted that strategic plans, creative strategies and other strategic input will come in large part from BUREAU staff in coordination with CONTRACTOR. In addition, CONTRACTOR shall suggest strategies to expand the impact of advertising/marketing campaigns (by maximizing reach and frequency of messaging and cost effectiveness) while allowing for the broadest possible exposure to the target audiences within the available budget.
- c. CONTRACTOR shall provide creative briefs before each campaign or individual project outlining the goals(s), objectives, audience, strategies budget and measurement.
- d. CONTRACTOR shall identify, evaluate, recommend, develop and execute and/or

manage the execution of new and emerging technology opportunities.

- e. CONTRACTOR shall demonstrate ability to strategically plan, integrate, manage and execute an assortment of marketing projects as well as manage various subcontractors.

3.6 Creative Concept

- a. CONTRACTOR shall be the principal advisor and provider to the BUREAU for creative services related to the concepting, design, and execution of advertising campaigns and programs targeting a variety of audiences including meeting/convention/tradeshaw planners, influencers, and attendees, leisure travel consumers, travel agents and tour operators, and various other selected targets that can help accomplish the BUREAU's mission.
- b. CONTRACTOR shall utilize cooperative advertising programs, branding campaigns, retail advertising programs, television, magazine, newspaper, radio, direct mail, out-of-home, sweepstakes and promotions, digital, web site/internet and other forms of advertising designed for all of the BUREAU target audiences and utilize these tools to create communications that define the breadth and depth of the destination to the target audiences for the purpose of creating incremented room demand.
- c. CONTRACTOR shall also develop creative campaigns for implementation on an international scale, as well as national and in-state.

3.7 Production/Design

- a. CONTRACTOR shall exercise its best efforts, in conformance with standard industry advertising practices, to develop or produce for the BUREAU the quality of artwork, online banners and web pages, engravings, digital files, printed matter and other collateral materials as may be required by the BUREAU and purchase same at advantageous rates available in the commercial advertising market;
- b. CONTRACTOR shall prepare radio and/or television commercials upon request by the BUREAU and render the necessary supervisory services in connection therewith, and, in the case of programs, shall render the necessary supervisory services in connection with such programs;
- c. Production responsibilities include but are not limited to:
 - trafficking of digital files/materials to media outlets,
 - providing dubs of broadcast materials,
 - providing digital files/disks of finished material to BUREAU including PDF files, JPGs, raw files, etc., created in programs designated for BUREAU
 - preparing advertising materials for presentation purposes (mounting, scanning, etc.).
- d. CONTRACTOR shall supply resources and support in the development of collateral material to help ensure materials continue to reflect and align with San Antonio's brand image. This includes, but is not limited to, the Travel & Leisure Guide, Pocket Guide, Destination Guide for Meeting and Travel Professionals and Lure Brochure.

3.8 Media Planning and Buying

- a. CONTRACTOR shall be the principal advisor and provider to the BUREAU for media buying services, both print and online.
- b. CONTRACTOR shall provide planning, including audience analysis, and implementation of media plans that are the most efficient and effective in reaching the defined target audiences.
- c. CONTRACTOR shall attempt to obtain added value elements to all media buys, including additional space/time, online components, and promotional programs.
- d. CONTRACTOR shall negotiate and contract with advertising media and others, for and in connection with the BUREAU's advertising, at the most advantageous rates available in the commercial advertising market and, when possible, CONTRACTOR shall use existing CITY Purchasing Department contracts to obtain such rates.
- e. CONTRACTOR shall monitor and review insertions of advertisements in publications, displays, broadcasts and other advertising media used to such a degree as is the custom by commercial advertising agencies. CONTRACTOR shall check such items as date of appearance, position of ad, size, mechanical reproduction, and any other related factors and furnish the BUREAU with proof of the placement and running of said advertisements by providing tearsheets with date of insertion, or other evidence of placement as approved by the BUREAU Director or designee.
- f. CONTRACTOR shall develop an annual flowchart of activity by month for each market and shall report on number of impressions generated for each market.

3.9 Online Marketing and Website Strategies

- a. CONTRACTOR shall be the principal advisor and provider to the BUREAU of online marketing strategy, including web development and social media.
- b. CONTRACTOR shall ensure and monitor accurate and comprehensive tracking of consumers' online behavior and activities through all BUREAU online channels, as well as provide monthly reports on all key measures. The key measures shall be established in coordination with BUREAU staff. CONTRACTOR shall ensure continuity and integrity of web analytics, including the availability of tracking data for at least five (5) years in the past based on BUREAU providing required access to such data. CONTRACTOR shall be the principal advisor and provide interpretation of web analytics and strategic and tactical recommendations.
- c. CONTRACTOR shall be the principal advisor and provider to the BUREAU online advertising.
- d. CONTRACTOR shall be the principal advisor and provider to the BUREAU for email marketing and shall coordinate with the BUREAU on the choice of online marketing tools and services, with preference on using the BUREAU's existing tools.

CONTRACTOR shall ensure consistency and integrity of email lists and opt-outs, and ensure that the BUREAU's master lists and opt-outs are kept up to date. CONTRACTOR shall provide detailed reports on the success of the campaigns, and provide recommendations for future campaigns.

- e. CONTRACTOR shall be the principal advisor and provider to the BUREAU for search engine optimization (SEO) and search engine marketing (SEM). SEO and SEM shall be goal-oriented and CONTRACTOR shall set the goals and key measures in coordination with BUREAU staff prior to execution of SEO and SEM campaigns. During and after the execution of SEO and SEM campaigns, CONTRACTOR shall provide reports of the achieved results expressed through the key measures.

3.10 Technical and Security Standards

- a. CONTRACTOR shall ensure compliance with the BUREAU and City of San Antonio technical and security standards of which it is provided notice by BUREAU.
- b. When providing solutions and services to the BUREAU, CONTRACTOR shall give special attention to the compatibility of all proposed technical solutions with existing BUREAU technology. Implementation of technical solutions (to include websites, databases, and other marketing systems) shall be coordinated with BUREAU's technical staff.

3.11 Public Relations

- a. CONTRACTOR shall work with BUREAU's Public Relations Division to strategize and implement public relation programs that further BUREAU's goals.
- b. CONTRACTOR shall generate incremental positive editorial media value for San Antonio and assist in identifying resources and subcontractors as needed.
- c. CONTRACTOR shall continually mine for, identify and execute national exposure opportunities for San Antonio.
- d. CONTRACTOR shall introduce new media relationships to BUREAU through outer market and in-market PR activities (such as media fams, individual research visits, media events, and similar).
- e. CONTRACTOR shall assist BUREAU Communications with both traditional and social media.
- f. CONTRACTOR shall provide public relations advice and counsel on an as-needed basis.

3.12 Research

- a. CONTRACTOR shall manage assigned research projects, primarily driven by the BUREAU, including but not limited to visitor intercept studies, client profile studies and tracking studies to measure leisure travelers' awareness and image of San Antonio as a vacation destination.

- b. CONTRACTOR shall conduct periodic competitive analysis, with the competitive set determined by the BUREAU, for visitor and trade markets to assess trends.
- c. CONTRACTOR shall study the CITY's products and services and analyze current and potential markets, as well as consider new objectives and strategies.
- d. CONTRACTOR shall employ on the BUREAU's behalf, knowledge of the available media and means that can be utilized to advertise BUREAU's products and services.

3.13 Account Management

- a. CONTRACTOR shall meet with BUREAU staff at such times and places, and in such duration, as may be requested for the purpose of carrying out BUREAU initiatives; and provide summaries of meetings.
- b. CONTRACTOR shall work closely with the BUREAU Director or her/his designee and appropriate CITY staff to perform any and all related tasks required by CITY in order to fulfill the purposes of this CONTRACT.
- c. CONTRACTOR shall track the effectiveness of advertising and marketing campaigns including return on investment, when possible.
- d. CONTRACTOR shall maintain internal procedures which ensure budget control, prompt billing and quality control, including but not limited to auditing invoices for space, time, preparation and services.
- e. CONTRACTOR shall prepare cost schedules and project sheets for advertising expenditures and other related costs and secure BUREAU's prior approval of all expenditures by submitting pre-production estimates.
- f. CONTRACTOR shall retain custody of CITY's property and exercise its best efforts, when deemed necessary by the BUREAU or CONTRACTOR, to obtain return of such property from third parties.
- g. CONTRACTOR shall assign and aid in the prosecution, application, registration, and defense of all applicable intellectual property.
- h. CONTRACTOR shall provide needed account service, consultation and regular contact to ensure prompt completion of projects, including but not limited to dedicating at least one (1) full time Account Executive.
- i. CONTRACTOR shall provide weekly status reports, or as otherwise requested, to the BUREAU updating the progress of all advertising projects.
- j. CONTRACTOR shall provide monthly budget spreadsheets detailing all billings for each project.
- k. CONTRACTOR shall track CONTRACTOR hours on a monthly basis and by large

project as well as provide monthly spreadsheets notating all hours for assigned projects.

- l. As provided for above, CONTRACTOR shall handle procurement and management of subcontracts for BUREAU services related to this CONTRACT, including but not limited to fulfillment, research, special events, telemarketing, and print/binding functions.
 - m. CONTRACTOR shall manage and track advertising response fulfillment calls and response pieces mailed, and report on same to the BUREAU on a monthly basis or as otherwise requested.
- 3.14 CONTRACTOR shall perform all services set forth in this CONTRACT and the Annual Scope of Work.
- 3.15 It is the understanding of the parties that Bryan Christian, CONTRACTOR's President, will serve as group account director on this CONTRACT for CONTRACTOR and in his capacity as President, that he shall be CITY's senior contact for this CONTRACT and will provide overall direction for the account. CONTRACTOR will work closely with the Director of BUREAU or her/his designee to select, develop and maintain CONTRACTOR personnel assigned to CITY's account. BUREAU reserves the right to request changes in CONTRACTOR personnel assigned to CITY's account, over the term of this CONTRACT, with such changes to be made upon mutual negotiation to a satisfactory resolution to both parties.
- 3.16 CONTRACTOR shall maintain and staff a local office in San Antonio for the term of this CONTRACT.

IV. OTHER CITY DEPARTMENT SERVICES

- 4.1 Subject to the consent of both BUREAU Director and CONTRACTOR and the determination by BUREAU Director that such Other City Department Services will not impede CONTRACTOR's ongoing projects for BUREAU, other CITY departments may utilize CONTRACTOR's services in accordance with the terms and conditions of this CONTRACT. Any such request from a CITY department shall be put in writing, outline the parameters of the requested services, the time frame for completion, and CITY's estimated budget which is inclusive of CONTRACTOR's incremental compensation and be forwarded to BUREAU Director for his or her signature indicating approval. If such approval is obtained, the request shall then be forwarded to CONTRACTOR for its signature indicating approval and, if so approved, the executed request shall become part of this CONTRACT and shall be governed by its terms and provisions.
- 4.2 Other CITY departments utilizing CONTRACTOR services are responsible for budgeting funds, negotiating scope of services, and payment for services. Said payment is not provided for under Article IX of this CONTRACT.
- 4.3 CONTRACTOR must submit copies of all signed production cost estimates, invoices, and CONTRACTOR hours expended on such Other City Department Services to the requesting CITY department and BUREAU.

V. EXCLUSIVITY

- 5.1 As provided for in Section 3.1, CITY may contract with another agency to provide advertising services outside the Scope of Services of the CONTRACT.
- 5.2 CONTRACTOR agrees not to represent any North American city, local political campaigns or any party that is involved in any local political issue, convention and visitor's bureau or similar tourism organization, destination marketing group, or hospitality industry organization during the tenure of this CONTRACT without prior written consent of BUREAU.
- 5.3 CONTRACTOR agrees to immediately notify the Director of BUREAU when, to the knowledge of CONTRACTOR through the exercise of reasonable due diligence, its services have been requested or engaged by firms or individuals who have a contract with CITY or are seeking a contract with CITY through a formal Request for Proposals, Requests for Bids, or Request for Qualifications process.
- 5.4 CONTRACTOR Loyalty. CONTRACTOR shall render loyalty and allegiance to CITY and maintain confidences in relation to the advertising of the products covered by this CONTRACT and BUREAU'S business and other activities.

VI. COORDINATION WITH CITY

- 6.1 CONTRACTOR's Team shall be comprised of only those subcontractors which are approved in writing by the Director of BUREAU, which approval will not be unreasonably withheld or delayed. No additions, deletions or substitutions to CONTRACTOR's Team may be made without the written approval of Director of BUREAU, or his/her designee.
- 6.2 CONTRACTOR must submit a written estimate and obtain written approval by the Director of BUREAU or his or her designee prior to:
 - 6.2.1 incurring time or expenses on any concept or program for BUREAU;
 - 6.2.2 contracting with any member of CONTRACTOR's Team or any other subcontractor or third party for any services within the Scope of Services;
 - 6.2.3 placing any advertisement for CITY in any advertising medium; and,
 - 6.2.4 incurring liability to a third party for any service including, but not limited to, artwork, conceptual design, or printed matter.
- 6.3 BUREAU reserves the right to refuse to approve any estimate as referred to in 6.2.
- 6.4 Unless otherwise approved by BUREAU, all third party services shall be competitively procured when required under state law or local ordinance. Upon request by BUREAU, CONTRACTOR will supply draft bids and/or request for proposals prior to release, for BUREAU review and approval. When requested, CONTRACTOR shall submit copies of

bids or proposals. with CONTRACTOR recommendation, upon submission of estimate to BUREAU for BUREAU approval.

VII. TERM OF CONTRACT

- 7.1 Unless otherwise terminated as provided for in Article XVI, the term of this CONTRACT shall be for a three (3) year period, beginning October 1, 2011, with one (1) additional two (2) year renewal option, subject to City Council approval by the passage of an ordinance.

VIII. PERFORMANCE CRITERIA

- 8.1 CONTRACTOR shall comply with various performance based criteria including, but not limited to the following:
- a. Influence the positive growth of the hotel occupancy tax to the City
 - b. increase hotel room nights sold in San Antonio
 - c. increase number of impressions
 - d. increase direct spending by convention and group delegates that are booked through BUREAU sales and marketing efforts
 - e. maintain or increase travelers' unaided awareness of San Antonio
 - f. increase the number of specific actions by consumers signaling an intent to travel to San Antonio, influenced by BUREAU specific marketing strategies
 - g. increase website visits annually
 - h. negotiate total average value-added media ROI of at least 20% over paid media as purchased annually
 - i. Assist BUREAU in meeting or exceeding annual Department performance measures
 - j. Achieves at least a "Meets Expectation" rating on a periodic evaluation of performance criteria including, but not limited to: Account Management, Creative, Strategic Planning, Production, Media Planning & Buying, Public Relations, Interactive, Budget and Financial.
 - k. Develop a consolidated dashboard that captures results and indicates ROI of marketing dollars invested.
- 8.2 The performance criteria outlined in Section 8.1 above is a non-exclusive list and CITY may consider other factors in the determination of CONTRACTOR's performance under this CONTRACT.

IX. CONTRACTOR FEES AND BILLINGS TO CITY

- 9.1 Budgeting. At the beginning of each fiscal year (commencing on October 1 of each calendar year), BUREAU shall determine the budget and work with CONTRACTOR to develop the Annual Scope of Work to be provided by CONTRACTOR for that fiscal year. Those services shall include the services contained in this CONTRACT and any Additional Services, such as printing, binding and postage. BUREAU reserves the right to adjust the budget during the term of this CONTRACT subject to CONTRACTOR's right to an adjustment in compensation received. CITY will be responsible for any costs related to CONTRACTOR carrying out its instructions. In the event a revised budget and Scope of Services is not mutually agreed prior to the end of any fiscal year, the

compensation arrangements for the previous year, including the amount of any retainer or monthly fee, will continue until amended by mutual agreement of the parties.

- 9.2 Monthly Retainer Fee. After BUREAU has completed the requirements in Section 9.1, BUREAU and CONTRACTOR will meet to discuss the budget and associated labor hours for the Annual Scope of Work, for the fiscal year and agree upon CONTRACTOR labor hours associated with the projects and finalize an all-inclusive monthly retainer fee. This budget will be agreed upon in writing between BUREAU Director and CONTRACTOR. The monthly retainer fee will be the estimated CONTRACTOR labor services for the Annual Scope of Work for that fiscal year divided by twelve. The monthly retainer fees paid shall be applied against actual fees and expenses as described in Section 9.2.1 of this CONTRACT. The procedure described herein shall be followed for each fiscal year thereafter during the term of this CONTRACT.

9.2.1 Reconciliation. The budget agreed upon between BUREAU and CONTRACTOR as described in Section 9.2 shall be reconciled every quarter for the first year of this CONTRACT and thereafter as agreed to by the parties. Such reconciliation shall consist, in part, of CONTRACTOR sending the monthly labor report to BUREAU, as referenced in Section 3.13(k) which outlines actual labor hours by project and category, as set forth in Section 9.9. All time charges shall be supported by accurate time records maintained by CONTRACTOR, which shall be provided to CITY within fifteen (15) days of CITY's request. In the event that the actual CONTRACTOR hours incurred monthly over the full fiscal year exceed the monthly retainer fees paid by CITY over the same fiscal year period, CITY shall not be obligated to pay any additional fees, except as agreed to in the manner provided for herein. Should Additional Services with associated labor hours be agreed upon in writing by both parties during the course of the year but after the initial agreed upon retainer is negotiated for that year, any excess hours from other projects in the fiscal year's budget or surplus hours from dropped projects covered in the fiscal year's budget will first be applied to cover the hours associated with any such Additional Services. If at mid-point in a fiscal year it is determined that CONTRACTOR hours are exceeding year-end estimate pace by more than 10%, CITY may adjust projects and/or may pay CONTRACTOR any agreed upon labor charges represented in a supplemental written cost estimate per project utilizing the same hourly rates outlined in Section 9.10. In any fiscal year under the term of this CONTRACT, if actual CONTRACTOR hours are less than commensurate with the monthly retainer fees paid by CITY, the parties agree to meet at the end of the fiscal year, but prior to the final annual payment, to agree upon an adjusted retainer to close out the respective fiscal year based on the final hourly reconciliation. Any agreement to adjust the monthly retainer fee shall be in writing and approved by the Director of BUREAU.

- 9.3 Third Party Invoices. Invoices submitted by CONTRACTOR to CITY covering expenditures or commitments made by CONTRACTOR on BUREAU's behalf shall be accompanied by copies of the invoices submitted by third parties to CONTRACTOR. Media invoices must include insert orders. CITY reserves the right to inspect actual media invoices during the term of this CONTRACT upon reasonable request by CITY.

9.3.1 CITY agrees to pay CONTRACTOR's invoices within 30 days of the invoice date, unless specified otherwise herein or unless CITY disputes the invoice. Other than as specified herein, all expenditures by CONTRACTOR in excess of \$1,000 will be

submitted for BUREAU's approval in the form of a written estimate. CONTRACTOR will be authorized to proceed with such expenditures on behalf of BUREAU upon receipt of BUREAU's signed estimate and the amounts of such production estimates will be subject to a potential increase of up to 10% based on actual time-of-staff and expenses. CITY shall not be responsible for any portions of such overages that extend beyond this 10% increase. In the event circumstances require that CONTRACTOR act upon BUREAU's oral approval, CONTRACTOR will confirm such oral approval in writing as soon as possible.

9.3.2 In purchasing materials or services on BUREAU's behalf as required to provide its services hereunder, all orders placed and contracts entered into by CONTRACTOR for such purposes will be rebilled to CITY in accordance with the terms of this CONTRACT. As advertiser, BUREAU will remain solely liable to CONTRACTOR for sums owing but not yet paid to CONTRACTOR. The relationship of the parties is that of independent contractors and no employment relationship is created by this CONTRACT. CITY agrees that CONTRACTOR will not be required to finance BUREAU's advertising or media efforts.

9.3.3 Production will be progressively billed at net cost -- 50% of the estimate upon BUREAU's signing the estimate covering such expenses and 50% upon completion of photography, recording or filming . All such payments will be due within 30 days of the invoice date, unless expedited payment is necessary to meet the payment schedule of the production vendor. Production costs will be documented, including, but not limited to, subcontractor bids, deposit or prepayment requirements, insurance coverage, schedules, travel expenses in accordance with Section 9.9 and miscellaneous support services. Supporting vendor invoices will be retained by CONTRACTOR. Media will be billed a month in advance upon BUREAU-approved estimates and will be reconciled to actual costs based upon documentation provided by the media. In no event will CITY be obligated to pay CONTRACTOR more than 1% above the applicable cost estimate for media.

9.3.4 CITY may modify, reject or cancel any and all arrangements, commitments, plans, schedules or work in progress, and in such event, CONTRACTOR will immediately take steps to implement BUREAU's instructions. In such event, CITY agrees: (a) to assume responsibility for any commitments CONTRACTOR has entered into with third parties according to BUREAU's authorization and (b) to pay CONTRACTOR, in accordance with the provisions of this Agreement, any and all proper charges earned and incurred by CONTRACTOR in connection with such work up to the time of its discontinuance, cancellation or modification including any cancellation penalties.

9.4 No Media Commissions or Service Charges. All media placement, printing, binding and production services, as well as any other outside vendor or subcontractor costs, shall be billed at actual cost only and without any added commission or other service charges.

9.5 Incidental Expenses. CONTRACTOR will be entitled to bill CITY, at CONTRACTOR's net cost, without any commission or mark up, for necessary incidental expenses incurred in connection with CONTRACTOR's rendition of services and performance of duties hereunder, including but not limited to, the cost of packaging advertising material for

shipment, postage, messenger, express and other transportation charges for the shipment of such material and expenses in connection with securing of testimonials, releases, copy review and negotiation of talent and other agreements, travel in accordance with Section 9.9, talent payments, talent payroll, and trademark searches.

- 9.6 Media Billing Errors. If scheduled advertising does not run, ran incorrectly, or if there exists any other problem or media billing error, CONTRACTOR shall immediately advise CITY and credit or appropriately adjust CITY's account on the next available billing invoice following the discovery of said media billing problem or error.
- 9.7 All discounts, incentives, media bonuses in the form of travel, and items of value earned by CONTRACTOR in purchases for CITY are the property of CITY, and CONTRACTOR shall include such items in the weekly status reports required by Section 3.13(i).
- 9.8 CONTRACTOR Overhead Charges. CONTRACTOR shall not charge CITY for any usual administrative copying costs or fax charges without the prior written approval of BUREAU. After obtaining written approval by the Director of the BUREAU, CONTRACTOR may charge CITY for large volume copying costs. CONTRACTOR agrees to work with BUREAU to obtain the most advantageous rates for any such expenses charged to CITY.
- 9.9 Travel. CITY will not pay any of CONTRACTOR's travel costs for travel between San Antonio and Austin. All production-related travel outside of San Antonio and CITY-requested travel will be indicated on the applicable estimate.
- 9.10 Hourly Labor Rates. CONTRACTOR's hourly rates will be as follows:

Account Management \$85/hr

This rate includes day-to-day management of campaigns and projects, regular CITY and internal status meetings, supervision of creative development, production, media and tactical planning and coordination of specifications, timelines and budgets. Also includes public relations tasks such as drafting and sending press releases, communications with media, managing and attending events. These tasks will be performed by staff at the Senior Account Executive level and below.

Senior Account Management \$135/hr

This rate includes overall strategy and planning, developing and presenting creative briefs, senior client meetings and oversight of creative development, production, media planning, digital and tactical planning. Includes oversight of budgets, resources and staffing allocation related to this account. Also includes public relations strategy and leadership such as cultivating media relationships, developing yearly messaging and outreach plans, planning and attending events and oversight of development and distribution of PR materials. These tasks will be performed by staff at the Account Supervisor level and above.

Interactive \$100/hr

This rate covers execution of specific interactive projects, which may include project management, design and copywriting, programming and QA/testing. These tasks will be performed by staff at the Project Supervisor level and below.

Senior Interactive \$135/hr

This rate includes development of the overall digital strategy for online advertising, website development, social, mobile, email marketing, etc. Also includes strategy and planning for specific interactive projects, which may include scoping, budgeting, senior creative direction, setting objectives and requirements and planning the user experience. These tasks will be performed by staff at the Senior Developer level and above.

Creative \$100/hr

This rate includes art direction and copywriting of any creative product including print ads, TV and radio spots, out-of-home, videos, collateral, etc. Also includes supervision of creative production including print mechanicals, retouching and proofing, as well as participation in photo shoots, TV shoots and recording sessions. These tasks will be performed by staff at the Senior Art Director/Writer level and below.

Senior Creative \$135/hr

This rate covers setting the vision and direction for the expression of the San Antonio brand, as well as management and oversight of all creative output. This may include creative conceiving (art direction and copywriting) to set the tone for a campaign or creative product, supervision of creative staff and oversight of creative production, including attendance at photo shoots, TV shoots and recording sessions to ensure that the creative vision is maintained. These tasks will be performed by staff at the Associate Creative Director level and above.

Media Planning/ Buying \$85/hr

This rate includes execution of the media plan through negotiation with media representatives, purchasing media, creating insertion orders and traffic instructions. Includes post-buy analysis for over or under-delivery and negotiation of make-goods, as well as tracking campaign performance in the case of digital media. Also includes assisting with development of the media plan through research and outreach to media representatives, as well as providing POVs on media opportunities. These tasks will be performed by staff at the Senior Planner/Buyer level and below.

Senior Media Planning/ Buying \$135/hr

This rate covers development of the overall strategy for outreach to consumers through paid media, both traditional and digital. This includes creating an annual media plan through client planning sessions, industry and audience research and discussions with media representatives. Also includes oversight of all planning and buying, post-buy analysis and evaluation of new opportunities. For digital media, includes oversight of tracking and performance and recommending strategic or tactical changes based on

results. These tasks will be performed by staff at the Media Supervisor level and above.

Account Planning \$135/hr

This rate covers development of creative strategy based on consumer insight, as well as oversight of creative product to ensure the work is on-strategy. This includes designing and supervising primary research such as focus groups, interviews and surveys, pulling secondary research such as industry data and competitive, as well as internal creative briefings and client strategy meetings. These tasks will be performed by the Director of Consumer Insight.

Production \$90/hr

This rate covers the production of all print and broadcast creative materials. For print materials, this includes finalizing layouts, developing mechanicals, retouching, proofreading, supervising print vendors, planning and overseeing photo shoots and managing the Print Studio team. For broadcast materials, this includes planning and supervising TV shoots and radio recording sessions and management of all vendors and talent. These tasks will be performed by staff at the Director of Studio Services level and below.

CONTRACTOR will not charge CITY for any time of staff from Bryan Christian (who will serve as President, Group Account Director and senior CONTRACTOR representative) or David Henke (who will serve as the executive creative director). Additionally, CONTRACTOR shall not charge CITY for time of staff for the financial stewardship and oversight provided by CONTRACTOR's CFO, Lynn Dobson.

- 9.11 Media Research Expenses. CONTRACTOR shall not bill CITY for obtaining any services or reports from standard research sources, such as Competitive Media Reporting, Nielsen, Arbitron, Simmons, Broadcast Advertisers Reports, MRI, and Scarborough.
- 9.12 CITY agrees to pay CONTRACTOR's invoices within thirty (30) days of receipt. All invoices shall have pre-production approval and be accompanied by a copy of the approved cost estimate. Additionally, all invoices shall include all supporting documentation as it relates to reimbursable charges and third party invoices as outlined in Section 9.3.

X. PROOF OF PAYMENT

- 10.1 CONTRACTOR shall have available proof of payment to media and other third parties in respect to all work and/or services rendered for, or on behalf of BUREAU, which proof may be inspected upon reasonable request by CITY.

XI. INTELLECTUAL PROPERTY AND RECORDS

- 11.1 Once paid for hereunder, all Intellectual Property, as defined in this CONTRACT, that was created, conceived, reduced to practice or made by CONTRACTOR during the regular course of or arising out of this CONTRACT, whether alone or in conjunction with others, subject to any third party licensed rights, (the "Work") shall be and will remain the sole and exclusive proprietary property of CITY. The Work shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Work and all rights therein, including all rights under the Visual Artists' Rights Act of 1990, shall be solely vested in CITY. CONTRACTOR further agrees to develop and execute any documents, give all oaths or testimony, and otherwise give all assistance deemed by CITY to be necessary or desirable to secure, maintain, or defend CITY's ownership of the Intellectual Property. As to materials including in the work which were previously developed or copyrighted by CONTRACTOR and not developed under this CONTRACT or which are not deemed a work made for hire, CONTRACTOR hereby grants to BUREAU an unrestricted, royalty-free license to use, modify and copy such materials consistent with any third party restrictions; provided that such license will not include use of CONTRACTOR proprietary systems, tools, methodologies, software or technology after the Term.
- 11.2 To comply with Section 11.1, CONTRACTOR, unless otherwise agreed with BUREAU, is required to set out in its contracts with other agencies and any other party who is not employed by CONTRACTOR ("Third Party") for services to be performed under this CONTRACT that all Intellectual Property created, conceived, reduced to practice or made by Third Party, pursuant to such contract (the "Third Party Work"), shall be and will remain the sole and exclusive proprietary property of CITY unless licensed with BUREAU's approval. Further, the contract shall inform Third Party that the Third Party Work shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Work and all rights therein, including all rights under the Visual Artists' Rights Act of 1990, shall be solely vested in CITY. CONTRACTOR is further required to give all assistance deemed by CITY to be necessary or desirable to secure, maintain, or defend CITY's ownership of the Third Party Work.
- 11.3 The Public Information Act, Government Code Section 552.021, requires the CITY to make certain information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if CONTRACTOR receives inquiries regarding such documents within its possession, CONTRACTOR shall, within thirty-six (36) business hours of receiving such requests, notify the CITY and forward such requests to the CITY for disposition. CONTRACTOR shall not release any records created during the course of performance of this CONTRACT to any entity without CITY'S written permission.
- 11.4 CONTRACTOR agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

- 11.5 CONTRACTOR shall bill BUREAU at net cost for all royalties and licensing fees for the use of third party intellectual property. CONTRACTOR agrees to indemnify and hold CITY harmless 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, methods or other intellectual property used in its work under this CONTRACT, when used consistent with rights negotiated by CONTRACTOR. CONTRACTOR shall defend CITY against all suits for infringement of any Intellectual Property rights, when used consistent with rights negotiated by CONTRACTOR. Further, if CONTRACTOR has reason to believe that the design, service, process or product specified is an infringement of the intellectual property rights of a third party, it shall immediately (within 36 business hours) give such information to the BUREAU.

XII. PROTECTION OF CITY AGAINST LOSS

- 12.1 CONTRACTOR shall endeavor to the best of its knowledge and ability to guard against any loss to CITY through the failure of media or through the failure of suppliers to execute properly their commitments.

XIII. INDEMNIFICATION

- 13.1 **CONTRACTOR covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS ELECTED OFFICIALS, 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 13.2 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.

- 13.3 CONTRACTOR shall advise CITY in writing within thirty-six (36) business hours of any claim or demand against CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT.
- 13.4 Defense Counsel - CITY shall have the right to select or to reasonably approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY approved defense counsel within ten (10) business days of CITY's written notice that CITY is invoking its right to indemnification under this CONTRACT. CITY shall 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.
- 13.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, 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 CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.
- 13.6 Release of Liability. CONTRACTOR may rely upon and is hereby released of liability for information, content, trademarks, or other materials provided by BUREAU to CONTRACTOR for use in the advertising and other materials produced by CONTRACTOR hereunder.

XIV. INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any work under this CONTRACT, CONTRACTOR shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to BUREAU, which shall be clearly labeled "**Advertising & Marketing CONTRACTOR Services**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to CITY. CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the BUREAU. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 14.2 CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. In no instance will CITY allow modification whereupon CITY may incur increased risk.

14.3 A contractor's financial integrity is of interest to CITY; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Type	Amounts
<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Per Occurrence basis)	\$2,000,000 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.

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

**Convention & Visitors Bureau
City of San Antonio
203 S. St. Mary's
San Antonio, TX 78205**

- 14.5 CONTRACTOR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with 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 CITY where CITY is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of CITY.
 - Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 14.6 Within fifteen (15) business days of a suspension, cancellation or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR's performance should there be a lapse in coverage at any time during this CONTRACT. Failure to provide and to maintain the required insurance shall constitute a material breach of this CONTRACT.
- 14.7 In addition to any other remedies CITY may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.
- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this CONTRACT.
- 14.9 It is agreed that CONTRACTOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this CONTRACT.

- 14.10 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 CITY shall be limited to insurance coverage provided.
- 14.11 CONTRACTOR and any subcontractors are responsible for all damage to their own equipment and/or property.

XV. EXAMINATION OF CONTRACTOR RECORDS

- 15.1 CITY reserves the right to conduct examinations, during regular business hours and following notice to CONTRACTOR by BUREAU, of the books and records related to the CONTRACT with CITY (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of CONTRACTOR's services hereunder) no matter where books and records are located, but not including individual salary or non-billable expenses. CITY also reserves the right to perform any and all additional audits relating to CONTRACTOR's services, provided that such audits are related to those services performed by the CONTRACTOR for CITY. These examinations shall be conducted at the offices maintained by CONTRACTOR if CONTRACTOR maintains an office in Bexar, County Texas; however, if CONTRACTOR does not maintain an office in Bexar County, then CONTRACTOR shall be responsible for delivering all such books and records related to this CONTRACT to the BUREAU or a place reasonably identified by its Director.
- 15.2 All applicable records and accounts of CONTRACTOR, together with all supporting documentation, shall be preserved in Bexar County, Texas or any other place agreed to by the CITY, by CONTRACTOR throughout the term of this CONTRACT and for four (4) years after the termination of this CONTRACT. During this time, CITY may require that any or all of such records and accounts be submitted for audit to CITY or to a Certified Public Accountant selected by CITY. CITY shall use its best business efforts to require any Certified Public Accountant selected by CITY to sign a non-disclosure agreement provided by CONTRACTOR. In the event CONTRACTOR fails to furnish CITY any documentation required hereunder within ten (10) days following the written request for same, then CONTRACTOR shall be in default of this CONTRACT, with the exception of when the CITY requests tearsheets, then CONTRACTOR will have up to thirty (30) days to furnish tearsheets to CITY before CONTRACTOR shall be in default of this CONTRACT.
- 15.3 Should CITY discover errors in internal controls or in record keeping associated with the scope of work covered by this CONTRACT, CONTRACTOR shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by CITY to CONTRACTOR of such discrepancies. CONTRACTOR shall inform CITY in writing of the action taken to correct such audit discrepancies.
- 15.4 If it shall be determined as a result of such audit that CONTRACTOR has overcharged CITY hereunder, then such overcharges shall be immediately refunded to CITY and

become due and payable with interest at the maximum legal rate under applicable law from the date the CITY paid such overcharges.

XVI. TERMINATION OF CONTRACT

- 16.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term as stated in Article VII. Term, or earlier termination pursuant to any of the provisions hereof.
- 16.2 Termination Without Cause. This CONTRACT may be terminated by either party upon sixty (60) days written notice, which notice shall be provided in accordance with Article XXIII. Notice.
- 16.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XXIII. Notice, CITY may terminate this CONTRACT 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 CONTRACT:
- 16.3.1 The sale, transfer, pledge, conveyance or assignment of this CONTRACT without prior approval, as provided in Article VI. Coordination with CITY; or
- 16.3.2 Failure to comply with the requirements of Article XXV. SBEDA on the manner proscribed in the CITY's SBEDA Ordinance.
- 16.4 Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this CONTRACT in a manner stated in this section 16.4 below, same shall be considered an event of default. CITY shall deliver written notice of said default specifying such matter(s) in default. CONTRACTOR shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article XXIII. Notice, to cure such default. If CONTRACTOR fails to cure the default within such fifteen-day cure period, CITY shall have the right, without further notice, to terminate this CONTRACT in whole or in part as CITY deems appropriate, and to contract with another firm to complete the work required in this CONTRACT. CITY shall also have the right to offset the cost of said new agreement with a new firm against CONTRACTOR'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.
- 16.4.1 Bankruptcy or selling substantially all of CONTRACTOR's assets.
- 16.4.2 Failing to perform or failing to comply with any covenant herein required.
- 16.4.3 Performing unsatisfactorily.
- 16.5 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 CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 16.6 Upon termination of this CONTRACT, CONTRACTOR shall transfer and make available to CITY or its authorized representative all property and materials in

CONTRACTOR'S possession or control belonging to CITY, all information regarding BUREAU's advertising, and all documents and files, including administrative files relating to CITY or BUREAU or the services provided under this CONTRACT. Additionally, if approved by third parties in interest, CONTRACTOR shall assign to BUREAU all reservations, contracts and arrangements with advertising media or other for advertising space, time, materials, or services yet to be used, and all rights and claims thereto and therein, and no extra compensation shall be paid to CONTRACTOR for its service in connection with this transfer. Upon such transfer, BUREAU shall assume all the obligations of CONTRACTOR which BUREAU authorized it to incur to third parties and shall release CONTRACTOR therefrom. If any third party in interest fails to approve the transfer to CITY by CONTRACTOR of any reservation, contract, or arrangement with said third party, then CONTRACTOR shall fulfill its obligation under such reservation, contract or arrangement and CITY shall fulfill its obligation to CONTRACTOR pertaining to such reservation, contract, or arrangement (including any payment obligation) as if this CONTRACT had not been canceled.

- 16.7 Upon completion of this CONTRACT, any uncompleted work previously authorized by BUREAU, either specifically or as part of a plan, will be paid for, to the extent completed, by CITY in accordance with the provisions of this CONTRACT and shall become the property of BUREAU.
- 16.8 The rights, duties and responsibilities of CONTRACTOR and BUREAU shall continue in full force and effect during the notice period, including preparing for and placing any advertising which BUREAU has authorized CONTRACTOR to place and CONTRACTOR's right to receive all monthly and other fees.
- 16.9 Billing Upon Termination. Within ninety (90) calendar days after termination of this CONTRACT, CONTRACTOR shall bill CITY for all amounts not previously billed or paid and for which CONTRACTOR is entitled to claim reimbursement from CITY under the terms of this CONTRACT. Subject to the provisions of Articles XV and XVI, CITY shall then pay such amounts to CONTRACTOR. In no event shall CITY be liable for charges submitted to CITY after this thirty day time period. CONTRACTOR is to receive no compensation in connection with space, time, materials or services the payment for which shall become due to an advertising medium or others after the termination of this CONTRACT. Failure by CONTRACTOR to submit its claims within said thirty (30) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this CONTRACT.
- 16.10 Upon the effective date of expiration or termination of this CONTRACT, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR or any of its subcontractors pursuant to this CONTRACT.
- 16.11 Termination not sole remedy. In no event shall CITY's action of terminating this CONTRACT, 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 CONTRACTOR for any default hereunder or other action.

- 16.12 Upon termination of this CONTRACT. CONTRACTOR will work together with CITY and any incoming advertising firm to insure a smooth transition.

XVII. NON-ASSIGNABILITY

- 17.1 This is a professional services contract and the rights, duties, and obligations of CONTRACTOR are not assignable without the express written consent of CITY in the form of an ordinance passed by City Council.

XVIII. CONFLICT OF INTEREST

- 18.1 CONTRACTOR acknowledges that it is informed that the City of San Antonio's City Charter prohibits contracts between CITY and any local public official, such as owner, officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY owned utilities and CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action of the matter would confer an economic benefit on the business entity. CONTRACTOR certifies, and this CONTRACT is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this CONTRACT is an officer or employee of CITY or any of its agencies. CONTRACTOR hereby certifies it has tendered to CITY a Disclosure Statement in compliance with CITY of San Antonio's Ethics Ordinance.

XIX. ENTIRE CONTRACT

- 19.1 This CONTRACT, including its Exhibits, embodies the final and entire CONTRACT of the parties hereto, superseding all oral or written agreements, previous and/or contemporaneous, agreements between the parties relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties unless same be in writing, dated subsequent to the date hereof, and executed by the parties.
- 19.2 Amendments. This CONTRACT may only be amended by a written document executed by the parties. City Council approval is not required for amendments that do not affect the term of this CONTRACT or the amount of compensation.

XX. SEVERABILITY

- 20.1 If any clause or provision of this CONTRACT is held invalid, illegal, or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal or unenforceable, there be added as part of the CONTRACT, 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.

XXI. LEGAL AUTHORITY

- 21.1 The signer of this CONTRACT for CONTRACTOR and for CITY represents, warrants, assures and guarantees that they have full legal authority to execute this CONTRACT on behalf of CONTRACTOR and/or CITY and to bind CONTRACTOR and/or CITY to all the terms, conditions, provisions and obligations herein contained.

XXII. VENUE AND GOVERNING LAW

- 22.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

XXIII. NOTICE

- 23.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and by Certified Mail, Return Receipt Requested, to CITY or to CONTRACTOR at the addresses first set forth below or to any other address of which written notice of change is given.

CITY
Convention & Visitors Bureau
City of San Antonio
203 S. St. Mary's
San Antonio, TX 78205

CONTRACTOR
Proof Advertising
114 W. 7th Street, Suite 500
Austin, TX 78701

- 23.2 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

- 24.1 The captions contained in this CONTRACT are for convenience of reference only and in no way limit or enlarge the terms and conditions of this CONTRACT.

XXV. COMPLIANCE WITH SBEDA AND EEO POLICIES

- 25.1 CONTRACTOR shall comply with CITY's SBEDA Program:

A. SBEDA Program

CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's International and Economic Development (IEDD) website page and is also available in hard copy form upon request to CITY. The SBEDA Ordinance Compliance

Provisions contained in this section of the CONTRACT are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this CONTRACT. Unless defined in a contrary manner herein, terms used in this section of the CONTRACT shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the

S/M/WBE firm, CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of CONTRACTOR’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by CONTRACTOR; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

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

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

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

Payment – dollars actually paid to CONTRACTOR and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by CITY for purposes of providing goods or services for CITY. For purposes of this CONTRACT, this term refers to CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by CITY. For purposes of this CONTRACT, CONTRACTOR is the Respondent.

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

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

SBE Directory - a listing of small businesses that have been certified for participation in CITY's SBE Program APIs.

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

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

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's

performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

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

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

Small Business Office Manager – the Assistant Director of the IEDD of CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with CITY. A copy of each binding agreement between CONTRACTOR and its subcontractors shall be submitted to CITY prior to execution of this CONTRACT.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

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

C. SBEDA Program Compliance – General Provisions

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

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term.
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers.
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this CONTRACT.
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this CONTRACT, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by

Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of this CONTRACT, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this CONTRACT for a minimum of four years, or as required by state law, following the conclusion of this CONTRACT or, in the event of litigation concerning this CONTRACT, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in CONTRACTOR's Subcontractor / Supplier Utilization Plan, CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 5. (a), this CONTRACT is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least 20% of its prime contract value (not including Media placement and other pass through expenses) to certified SBE firms. The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this CONTRACT that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this CONTRACT, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is attached in Exhibit II. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of this CONTRACT shall be a material breach and grounds for termination of the CONTRACT, and may result in debarment from

performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this CONTRACT for violations of the SBEDA Ordinance, or under any other law.

E. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this CONTRACT, CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall CONTRACTOR retaliate against any person for reporting instances of such discrimination. CONTRACTOR shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in CITY's Relevant Marketplace. CONTRACTOR understands and agrees that a material violation of this clause shall be considered a material breach of this CONTRACT and may result in termination of this CONTRACT, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to CITY pursuant to the solicitation for this CONTRACT is hereby attached in Exhibit II to this CONTRACT. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

F. Prompt Payment

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

G. Violations, Sanctions and Penalties

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

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

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

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

XXVI. LITIGATION EXPENSES

- 26.1 Under no circumstances will the funds received under this CONTRACT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY or any other public entity.
- 26.2 During the term of this CONTRACT, if CONTRACTOR files and/or pursues an adversarial proceeding against CITY, then, at CITY'S option, this CONTRACT and all access to the funding provided for hereunder may terminate.
- 26.3 CONTRACTOR, at CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against CITY remains unresolved.

26.4 For purposes of this Article, "adversarial proceedings" include any cause of action filed by CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing.

IN WITNESS OF WHICH THIS CONTRACT HAS BEEN EXECUTED on this the _____ day of _____, 2011.

CITY OF SAN ANTONIO

SHERYL SCULLEY
CITY MANAGER

PROOF ADVERTISING, LLC

BY: 

BRYAN CHRISTIAN
PRESIDENT

ATTESTED TO: _____
CITY CLERK

APPROVED: _____
CITY ATTORNEY

Exhibit I: Annual Scope of Work