

PROFESSIONAL SERVICES AGREEMENT
for
WRITTEN PROMOTIONAL EXAMINATIONS
and
PROMOTIONAL ASSESSMENT CENTER
for the SAN ANTONIO FIRE DEPARTMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”) acting by and through its City Manager and Industrial/Organizational Solutions, Inc. by and through its Chief Executive Officer, Chad C. Legel, M.S. (hereinafter referred to as “Contractor”), both of which may be referred to herein collectively as the “Parties”.

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

SECTION 1. DEFINITIONS

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

“**City**” is defined in the preamble of this Agreement and includes its successors and assigns.

“**Commission**” shall mean the San Antonio Fire Fighters’ and Police Officers’ Civil Service Commission.

“**Contractor**” is defined in the preamble of this Agreement and includes its successors.

“**Director**” shall mean the “Human Resources Director” and/or “Civil Service Director”.

SECTION 2. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 1, 2024, and terminate on June 30, 2027.

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

2.3 **CITY** shall have the option to renew this Contract on the same terms and conditions for one (1) additional two-year period. All renewals and/or extensions shall be in writing, signed by the City Manager, or designee, or the Director of the Human Resources Department, and shall not require

additional action by the City Council. All renewals shall be subject to appropriation of funds by the City Council.

2.4 **CITY** will be able to continue utilizing testing services if necessary beyond the date of any termination or expiration of this agreement pending finalization of new **CITY** contract. The **CITY** agrees to pay for examinations as and when needed, and compensate the **CONTRACTOR** at the rates listed in Section 4, Compensation of this Agreement, for services that comply with the provision of the Agreement. This is to allow for continuity of testing during a transition period in the case a new/additional contractor is selected as a result of a future Request for Proposal process.

SECTION 3. SCOPE OF SERVICES

CONTRACTOR agrees to provide the services described in this Section. III entitled Scope of Services in exchange for the compensation described in Section IV Compensation to Contractor.

3.1 WRITTEN PROMOTIONAL EXAMINATION

- A. Within 45 calendar days after receiving a request from the **CITY**, **CONTRACTOR** shall complete a properly structured, updated, detailed job/task analysis for the positions of Fire Engineer, Fire Lieutenant, Fire Captain, and District Fire Chief in the San Antonio Fire Department. Each written examination shall consist of questions relating to the duties of the classification of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related written examinations.
- B. **CONTRACTOR** shall prepare a validated job-related written examination and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.
- C. **CONTRACTOR** shall prepare each examination in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, to include but not limited to, EEOC, ADA, and Department of Justice.
- D. **CONTRACTOR** shall prepare a master examination for each rank, with 100 questions per examination drawn from a pre-approved list of study materials, and answer keys for each

of the examinations constructed. **CONTRACTOR SHALL DELIVER SAME TO THE Human Resources Director** no later than two (2) weeks prior to the date of each examination, a camera-ready master examination and an answer key. **CONTRACTOR** must have the capability to complete the process of developing and delivering a validated examination within a minimum of 45 days of receiving notification by the **CITY**.

- E. **CONTRACTOR** shall develop questions that are unique to each particular examination.
- F. **CONTRACTOR** shall ensure primary and active involvement in all phases of the scope of work by a principal of the firm.
- G. **CONTRACTOR** shall prepare for the defense of, and defend, any examination questions which may be appealed during the five (5) day review period. This will comprise the creation of briefing materials that shall include 10 binders/booklets containing the following: 1) all appealed questions, 2) the portion of study material containing the source from which the answer comes, and 3) a (no more than one page) summary of statistics of answers selected for each question appealed. There is normally one appeals hearing per rank. This work will be compensated at a pre-determined rate. **CONTRACTOR** shall correct any manifest errors.
- H. **CONTRACTOR** shall compile item analyses and other statistics for disparate impact and submission of statistical reports upon request.
- I. **CONTRACTOR** shall provide litigation consulting and expert testimony, as and when needed, to be compensated at a pre-determined hourly rate.
- J. **CONTRACTOR** shall ensure compliance with Chapter 143 of the Local Government Code and the current Collective Bargaining Agreement between The City of San Antonio and the International Association of Fire Fighters Local 624, as applicable, with regard to the development and administration of the written promotional exam.
- K. **CONTRACTOR** shall ensure that all services shall be performed to the satisfaction of the Director. **CITY** shall have exclusive use of the examinations including all examination

questions and scenarios developed for the **CITY**.

- L. **CONTRACTOR** shall prepare the examinations in a manner that ensures the strictest confidentiality regarding all aspects of the process. **CONTRACTOR** shall perform all services required and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services shall be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.

3.2 PROMOTIONAL ASSESSMENT CENTER

- A. **CONTRACTOR** shall conduct a properly structured, updated, detailed job/task analysis for the position of District Fire Chief in the San Antonio Fire Department. The assessment center process shall be designed so that all exercises are related to the requirements of the position to be filled. The frequency of full job/task analyses and/or currency analyses will be done in accordance with generally accepted industry standards to ensure the content validity of the related assessment center.
- B. **CONTRACTOR** shall prepare, administer and score a validated job-related assessment center process and make all reasonable effort to minimize discrimination against any candidate because of race, color, religion, national origin, gender, disability, sexual orientation, or age.
- C. **CONTRACTOR** shall provide the City with a list of potential assessors who meet the criteria set forth in the SAFD CBA. Final assessor selection shall be made by the City in collaboration with the Union.
- D. **CONTRACTOR** will consult and meet with City representatives (HR & SAFD) to ensure selection of assessors and support during assessment center exercise selection.
- E. **CONTRACTOR** is responsible for providing an orientation for candidates participating in the assessment center, as well as training assessors to complete any required scoring for the exercises.

- F. **CONTRACTOR** will provide assessment center materials, supplies and packages for all candidates expected to sit for the assessment center. Materials and supplies provided must be sufficient for candidates to prepare for the assessment center exercises. Supplies should include: pens, paper, pencils, highlighters, paperclips, staples, staplers, note cards, markers, flip board/easel boards, rulers, tape dictionaries, and timers.
- G. **CONTRACTOR** will provide assessment center exercise packets for all candidates expected to sit for the assessment center. Packets must be prepared, sealed, and individually numbered after validation so that they may be distributed to candidates in a timely manner.
- H. **CONTRACTOR** will prepare a validated job-related assessment cadre using a variety of exercises as agreed to between the **CITY** and the Union. Examples of past exercises include: In-Basket; Problem Solving/analysis; Oral Resumes/Structured Interviews; Leaderless Group Presentation; Role Playing; Memo/Report Writing; Oral Presentation/Plan Preparation; Staff Meeting; Special Event/Operations; and others as they are established and determined to be reasonably valid predictors of job related characteristics.
- I. **CONTRACTOR** shall prepare, staff, administer, and score each assessment center process in a manner that ensures compliance with all State and Federal guidelines related to testing and employee selection procedures, including but not limited to, EEOC, ADA, and Department of Justice.
- J. **CONTRACTOR** shall compile item analysis and other statistics for disparate impact and submission of statistical reports upon request.
- K. **CONTRACTOR** shall provide litigation consulting and expert testimony as and when needed, to be compensated at a pre-determined hourly rate.
- L. **CONTRACTOR** shall ensure compliance with the current Collective Bargaining Agreement between the City of San Antonio and the International Association of Fire Fighters Local 624, as applicable, with regard to the development and administration of the assessment center process.

- M. **CONTRACTOR** shall perform all services required with active involvement in the scope of work of a principal of the firm, and hereby represents that all its employees or associates are fully qualified to perform the services described herein. Such services will be performed in accordance with the ordinary reasonable standard of care and due diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances.
- N. **CONTRACTOR** shall prepare staffing and complete assessor scoring of the assessment center, to include making site, hotel, and travel arrangements for **CONTRACTOR** staff and assessors, if needed.
- O. **CONTRACTOR** shall ensure that all services are to be performed to the satisfaction of the Director.

3.3 COORDINATION WITH THE CITY

- A. The CITY agrees to provide sufficient cooperation with respect to any data collection steps during the job analysis and test development phases. The CITY will coordinate diverse assessment center panels, interview schedules and identify interview locations as necessary.
- B. The CITY agrees to prepare and post the examination announcements and registration lists.
- C. The CITY agrees to coordinate and acquire use of the facilities in which to hold the examination.
- D. The CITY agrees to administer and score the written promotional examinations.
- E. The CITY agrees to develop, approve and distribute the eligibility lists/written examination scores.
- F. The CITY will coordinate the selection and availability of assessment board members in accordance with requirements established in the CBA with regard to staffing and conducting District Fire Chief assessment centers.
- G. The CITY will provide administrative support with respect to data collection steps during job-task analysis and test development; will coordinate interview schedules; and identify interview locations as necessary.

3.4 The **CONTRACTOR** shall hold periodic conferences with the **CITY** designee so that the project, as developed, shall have the full benefit of **CITY**'s experience and knowledge of existing needs and facilities and be consistent with its current policies and standards.

3.5 **CITY** shall provide written notice to **CONTRACTOR** of any errors or omissions discovered in **CONTRACTOR**'s services, or performance, or of any development that affects the scope or tinting of **CONTRACTOR**'s services.

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

SECTION 4. COMPENSATION TO CONTRACTOR

4.1 In consideration of **CONTRACTOR**'s performance in a satisfactory and efficient manner, as determined solely by **DIRECTOR**, of all services and activities set forth in this Agreement, **CITY** agrees to pay **CONTRACTOR** an estimated amount not to exceed \$726,260.00 dollars as total compensation for the three (3) year Agreement period and one (1) two-year additional optional period, to be paid to **CONTRACTOR** as services are requested and rendered as per Attachment A, Pricing Schedule.

4.2 Additionally, **CITY** shall have the option to require, and **CONTRACTOR** agrees that additional promotional examinations and assessment centers for each rank be prepared and conducted by **CONTRACTOR**, if requested. Payment for such examinations shall be on the same terms and conditions outlined in Section 4. The services required and terms of payment for any such additional examinations shall be committed to writing and signed by the City Manager, or designee, or the **DIRECTOR**, and shall not require action by the City Council so long as the cost of the additional services are paid from previously appropriated funds.

4.3 **CITY** agrees to make payment to **CONTRACTOR** based upon mutually agreed schedule at the onset of work with one-third at initiation, one-third at project midpoint, and one-third at completion, provided such work is approved by the **DIRECTOR**. Payment shall be made for services as to each item listed above at the respective rate indicated in Attachment A, Pricing Schedule.

4.4 Total payment to **CONTRACTOR** cannot exceed those amounts set forth above, without prior approval and agreement of all Parties, evidenced in writing and approved by the San Antonio City Council by passage of an Ordinance therefore. Notwithstanding the forgoing, **DIRECTOR** may execute an amendment to this contract without additional City Council approval, to increase the total compensation payable to **CONTRACTOR** hereunder if **CITY** requires **CONTRACTOR** to perform additional promotional examinations and assessments beyond the quantities stated in Attachment A, Pricing Schedule, so long as sufficient funds have been appropriated for the increased cost.

4.5 **CITY** agrees to pay for expert testimony, as and when needed, to be compensated at the rate of \$230 per hour. **CONTRACTOR**'s travel costs will be billed at the lowest non-restrictive coach rate from Oak Brook, Illinois or the nearest airport located near Oak Brook, Illinois, plus lodging and per diem.

4.6 **CONTRACTOR** acknowledges and agrees that it shall provide services under this Agreement at a certain level with a certain degree of accuracy and timeliness. Therefore, **CONTRACTOR** agrees to the following performance standards and administrative fee adjustments:

| CATEGORY | SERVICE LEVEL AGREEMENT | PENALTY (as a % of the related fee) |
|-------------------|--|--|
| Accuracy | During an appeal hearing, if two (2) exam questions are rejected/amended by the COMMISSION because the question was not drawn from the specified study material, the answer key was in error, or due to a typographical/administrative error on the part of the CONTRACTOR | 20% |
| Accuracy | During an appeal hearing, if three (3) exam questions are rejected/amended by the COMMISSION because the question was not drawn from the specified study material, the answer key was in error, or due to a typographical/administrative error on the part of the CONTRACTOR | 30% |
| Accuracy | During an appeal hearing, if four (4) or more exam questions are rejected by the COMMISSION because the question was not drawn from the specified study material, the answer key was in error, or due to a typographical/administrative error on the part of the CONTRACTOR | 40% |
| Timeliness | If timelines established for the development, delivery, administration and scoring of a written exam and assessment center are not met | 40% |

4.7 Nothing contained in this Agreement shall require **CITY** to pay for any unsatisfactory work, as determined by **DIRECTOR**, or for work that is not in compliance with the terms of this Agreement. **CITY** shall not be required to make any payments to **CONTRACTOR** at any time **CONTRACTOR** is in default under this Agreement.

4.8 Despite **CITY**'s possible approval of an assignee or subcontractor, the **CITY** shall, in no event, be obligated to any third party, including any assignee or subcontractor of the **CONTRACTOR**, for performance of work or services, nor shall **CITY** funds ever be used for

payment of work or services performed prior to the date of this Agreement execution or extending beyond the expiration date of this Agreement.

4.9 Payment will be made to **CONTRACTOR** following written approval of the final work products and services by **DIRECTOR**. **CITY** shall not be obligated or liable under this Agreement to any party, other than **CONTRACTOR**, for the payment of any monies or the provision of any goods or services.

SECTION 5. INTELLECTUAL PROPERTY

5.1 **CONTRACTOR** must abide by the following regarding intellectual property rights:

CONTRACTOR shall pay all royalties and licensing fees. **CONTRACTOR** shall hold **CITY** harmless and indemnify **CITY** from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if **CONTRACTOR** has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to **CITY**.

5.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, **CONTRACTOR** will immediately:

Either:

1. obtain, at **CONTRACTOR**'s sole expense, the necessary license(s) or rights that would allow **CITY** to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
2. alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
3. reimburse **CITY** for any expenses incurred by **CITY** to implement emergency backup measures if **CITY** is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

CONTRACTOR further agrees to:

1. assume the defense of any claim, suit, or proceeding brought against the **CITY** for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
2. assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

3. indemnify the **CITY** against any monetary damages and/or costs awarded in such suit.

5.3 **CONTRACTOR** is given sole and exclusive control of all negotiations relative to the settlement thereof, but that **CONTRACTOR** agrees to consult with the City Attorney of the **CITY** during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the **CITY**, provided that:

the Software or the equipment is used by the **CITY** in the form, state, or condition as delivered by **CONTRACTOR** or as modified without the permission of **CONTRACTOR**, so long as such modification is not the source of the infringement claim,

the liability claimed shall not have arisen out of the **CITY**'s negligent act or omission, and the **CITY** promptly provide **CONTRACTOR** with written notice within 15 days following the formal assertion of any claim with respect to which the **CITY** asserts that **CONTRACTOR** assumes responsibility under this section.

SECTION 6. OWNERSHIP OF DOCUMENTS

6.1 Ownership and exclusive use of the examinations by the **CONTRACTOR**.

6.2 All services are to be performed to the satisfaction of the **DIRECTOR**, and the **CONTRACTOR** shall own the documents or videos used to conduct the examinations, while the **CITY** shall have use of the examinations and candidate responses to administer the examinations, only to determine compliance with the terms of the contract between **CITY** and **CONTRACTOR**, and to respond to and resolve any questions regarding the adequacy and accuracy of any examination as prepared or administered under the contract between the Parties.

6.3 **CITY** and **CONTRACTOR** acknowledge and agree that all documents and videos containing questions or answers, designated as "test materials", created or used pursuant to this Agreement in the conduct of a promotional exam under the terms of this contract, are considered confidential and the sole property of the **CONTRACTOR**. This is done to assure the accuracy of the promotional examinations administered under this contract and to prevent unfair advantage to candidate(s) by preventing prior access to the test materials used in the examinations. Parties agree to notify each other in the event any test material related to this contract shall become the subject of any request or legal claim for access to any document or video in the possession of **CITY** or **CONTRACTOR** for which **CONTRACTOR** has a claim of copyright or proprietary confidentiality.

6.4 Notwithstanding any other provision of this agreement, the Parties understand that **CITY** is a governmental entity required to comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) ("TPIA" or the "Act") when responding to records requests made under the Act. Pursuant to the requirements of TPIA, if the **CITY** receives a request for information which **CONTRACTOR** has marked or identified as being confidential, trade secret, commercial, financial or proprietary information, the **CITY** will respond to the request in accordance with the procedures set forth in Section 552.305 of the Act. Specifically, the **CITY** will notify **CONTRACTOR** of its receipt of the request and request an attorney general decision identifying the exception(s) to disclosure believed to apply. The Parties acknowledge that TPIA requires a brief to be submitted to

the attorney general explaining why the claimed exceptions apply to the information at issue. **CONTRACTOR** shall not be obligated to submit the brief supporting those claimed exceptions. **CONTRACTOR** shall be solely responsible for submitting the brief and the documents at issue to the attorney general.

6.5 Should the attorney general render a decision indicating that all or part of the information must be disclosed, the **CITY** shall be permitted to disclose the information unless **CONTRACTOR** successfully contests the attorney general decision in accordance with the requirements of TPIA. Nothing in this agreement shall require the **CITY** to institute or participate in any litigation relating to an open records request for information that **CONTRACTOR** considers to be confidential.

SECTION 7. RECORDS RETENTION

7.1 **CONTRACTOR** and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the **CITY** at their respective offices, at all reasonable times and as often as **CITY** may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.

7.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, **CONTRACTOR** shall retain the records until the resolution of such litigation or other such questions. **CONTRACTOR** acknowledges and agrees that **CITY** shall have access to any and all such documents at any and all times, as deemed necessary by **CITY**, during said retention period. **CITY** may, at its election, require **CONTRACTOR** to return said documents to **CITY** prior to or at the conclusion of said retention.

7.3 **CONTRACTOR** shall notify **CITY**, immediately, in the event **CONTRACTOR** receives any requests for information from a third party, which pertain to the documentation and records referenced herein. **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

SECTION 8. TERMINATION

8.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Section 2. Term, or earlier termination pursuant to any of the provisions hereof.

8.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 days written notice, which notice shall be provided in accordance with Section 9. Notice.

8.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Section 9, Notice, **CITY** may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

8.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Section 12. Assignment and Subcontracting.

8.4 Defaults With Opportunity for Cure. Should **CONTRACTOR** default in the performance of this Agreement in a manner stated below in this same section, shall be considered an event of default. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **CONTRACTOR** shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Section 9. 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 Agreement in whole or in part as **CITY** deems appropriate, and to contract with another **CONTRACTOR** to complete the work required in this Agreement. **CITY** shall also have the right to offset the cost of said new Agreement with a new **CONTRACTOR** 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.

8.4.1 Failure to comply with the terms and conditions stated in Section 14. SBEDA

8.4.2 Bankruptcy or selling substantially all of company's assets

8.4.3 Failing to perform or failing to comply with any covenant herein required

8.4.4 Performing unsatisfactorily

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

8.6 Regardless of how this Agreement is terminated, **CONTRACTOR** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **CONTRACTOR**, or provided to **CONTRACTOR**, hereunder, regardless of storage medium, if so requested by **CITY**, or shall otherwise be retained by **CONTRACTOR** in accordance with Section 7. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by **CITY** and shall be completed at **CONTRACTOR**'S sole cost and expense. Payment of compensation due or to become due to **CONTRACTOR** is conditioned upon delivery of all such documents, if requested.

8.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, **CONTRACTOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this Agreement through the effective date of termination. Failure by **CONTRACTOR** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **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 Agreement.

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

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

SECTION 9. NOTICE

9.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for **CITY**, to:

City of San Antonio
Human Resources Department
100 W. Houston Street, 13th Floor
San Antonio, Texas 78205

If intended for **CONTRACTOR**, to:

I/O Solutions, Inc.
Attn: Chad Legel
1520 Kensington Rd., Ste. 110
Oak Brook, IL 60523

SECTION 10. INSURANCE

10.1 No later than 30 days before the scheduled event, **CONTRACTOR** must provide a completed Certificate(s) of Insurance to **CITY**'s Human Resources Department. The certificate must be:

- clearly labeled with the legal name of the contract in the Description of Operations block (SAFD Promotional Testing and Assessment Center);

- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (**CITY** will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.
- 10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Risk Management Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 10.3 If the **CITY** does not receive copies of insurance endorsement, then by executing this CONTRACT, **CONTRACTOR** certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the CONTRACT.
- 10.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this CONTRACT based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 10.5 **CONTRACTOR** shall obtain and maintain in full force and effect for the duration of this CONTRACT, at **CONTRACTOR's** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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. If the **CONTRACTOR** claims to be self-insured, they must provide a copy of their declaration page so the **CITY** can review their deductibles:

| <i>INSURANCE TYPE</i> | <i>LIMITS</i> |
|---|--|
| 1. Workers' Compensation | Statutory |
| 2. Employers' Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| 3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors | For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate. |
| 4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles | Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service. |

| | |
|---------------------------|---|
| 5. Professional Liability | \$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. |
| *6. Cyber Liability | \$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage. |

- 10.6 **CONTRACTOR** must require, by written contract, that all subcontractors providing goods or services under this **CONTRACT** obtain the same insurance coverages required of **CONTRACTOR** and provide a certificate of insurance and endorsement that names **CONTRACTOR** and **CITY** as additional insureds. **CONTRACTOR** shall provide **CITY** with subcontractor certificates and endorsements before the subcontractor starts work.
- 10.7 If a loss results in litigation, then the **CITY** is entitled, upon request and without expense to the **CITY**, to receive copies of the policies, declaration page and all endorsements. **CONTRACTOR** must comply with such requests within 10 days by submitting the requested insurance documents to the **CITY** at the following address:

City of San Antonio
Attn: Human Resources Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 10.8 **CONTRACTOR's** insurance policies must contain or be endorsed to contain the following provisions:

- Name **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to **CITY** where **CITY** is an additional insured shown on the policy. **CITY's** insurance is not applicable in the event of a claim.
- **CONTRACTOR** shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of **CITY**; and
- Provide 30 days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- 10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, 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** 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**.

- 10.10 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 required, **CITY** may order **CONTRACTOR** to stop work and/or withhold any payment(s) which become due to **CONTRACTOR** under this CONTRACT until **CONTRACTOR** demonstrates compliance with requirements.
- 10.11 Nothing contained in this CONTRACT shall be construed as limiting the extent to which **CONTRACTOR** may be held responsible for payments of damages to persons or property resulting from **CONTRACTOR** or its subcontractors' performance of the work covered under this CONTRACT.
- 10.12 **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.
- 10.13 The insurance required is in addition to and separate from any other obligation contained in this CONTRACT and no claim or action by or on behalf of **CITY** shall be limited to insurance coverage provided.
- 10.14 **CONTRACTOR** and any subcontractor are responsible for all damage to their own equipment and/or property resulting from their own negligence.

SECTION 11. INDEMNIFICATION

11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's errors, omissions or negligence associated with the activities under this Agreement, including any errors or omissions of any agent, officer, director, representative, employee, CONTRACTOR or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY

AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

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

11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of 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.

SECTION 12. ASSIGNMENT AND SUBCONTRACTING

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

12.2 It is CITY's understanding and this Agreement is made in reliance thereon, that CONTRACTOR intends to use the following subcontractors in the performance of this Agreement: none. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject

by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of **CONTRACTOR**. **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONTRACTOR**, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

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

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void *ab initio* and shall confer no rights upon any third person. Should **CONTRACTOR** assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, **CITY** may, at its option, cancel this Agreement and all rights, titles and interest of **CONTRACTOR** shall thereupon cease and terminate, in accordance with Section 7, Termination, notwithstanding any other remedy available to **CITY** under this Agreement. The violation of this provision by **CONTRACTOR** shall in no event release **CONTRACTOR** from any obligation under the terms of this Agreement, nor shall it relieve or release **CONTRACTOR** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

SECTION 13. INDEPENDENT CONTRACTOR

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

SECTION 14.

RESERVED

SECTION 15. CONFLICT OF INTEREST

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

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

SECTION 16. AMENDMENTS

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both **CITY** and **CONTRACTOR**, and subject to approval by the City Council, as evidenced by passage of an ordinance.

SECTION 17. SEVERABILITY

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

SECTION 18. LICENSES/CERTIFICATIONS

18.1 **CONTRACTOR** warrants and certifies that **CONTRACTOR** and any other person designated to provide services hereunder has the requisite training, license and/or certification to

provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

SECTION 19. COMPLIANCE

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

SECTION 20. NONWAIVER OF PERFORMANCE

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of **CITY**, such changes must be approved by the City Council, as described in Section 16. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

SECTION 21. LAW APPLICABLE and FEES

21.1 This agreement shall be construed under and in accordance with the laws of the state of Texas and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

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

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

SECTION 22. LEGAL AUTHORITY

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

SECTION 23. PARTIES BOUND

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

SECTION 24. CAPTIONS

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

SECTION 25. INCORPORATION OF EXHIBITS

25.1 **CONTRACTOR** understands and agrees that all exhibits referred to in this Agreement are intended to be and hereby are, specifically made a part of this Agreement. Said exhibits are as follows:

Exhibit 1 CITY's Request for Proposal

Exhibit 2 **CONTRACTOR's** Proposal

25.2 **CONTRACTOR** understands and agrees that Exhibits 1 and 2 are a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **CONTRACTOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this Agreement.

25.3 The terms of this Agreement shall be final and binding where there is any conflict between the terms of CITY's Request for Proposal, **CONTRACTOR's** Proposal and the terms of this Agreement; CITY's. Request for Proposal shall control where it conflicts with **CONTRACTOR's** Proposal.

SECTION 26. ENTIRE AGREEMENT

26.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Section 16, Amendments.

SECTION 27. NON-DISCRIMINATION

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

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

CONTRACTOR INDUSTRIAL/ORGANIZATIONAL SOLUTIONS, INC.

(Signature)

Printed **Erik Walsh**
Name: _____
Title: **City Manager**

(Signature)

Printed **Chad C. Legel**
Name: _____
Title: **President and CEO**

Approved as to Form:

Krista Cover
Assistant City Attorney