

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT
FOR CONSULTING SERVICES FOR
DEVELOPMENT OF CUSTOM EXAMINATIONS FOR
FIREFIGHTER MUNICIPAL CIVIL SERVICE TESTING WITH
INDUSTRIAL/ORGANIZATIONAL SOLUTIONS, INC. dba I/O SOLUTIONS, INC.**

THIS AGREEMENT is made and entered into on this the ____ day of May, 2015, by and between the City of Round Rock, a Texas home-rule municipal corporation, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (hereinafter referred to as the "City"), and Industrial Organizational Solutions, Inc. dba I/O Solutions, Inc., whose offices are located at 1127 South Mannheim Road, Suite 203, Westchester, IL 60154-2562 (hereinafter referred to as the "Consultant" or "I/O Solutions").

RECITALS:

WHEREAS, City desires to contract for Consultant's services generally described as follows: (1) complete a job analysis process comprised of the methodological elements of job observation/interview sampling and outcomes, job analysis questionnaire development and review, job analysis questionnaire sampling/distribution/analysis, task-KSAP linkage, and essential task and KSAP results; and (2) based thereon, develop and author custom written examinations, in accordance with Local Government Code Title 5, Chapter 143 "Municipal Civil Service for Firefighters and Police Officers," for City's Fire Department entrance and promotional examinations; and

WHEREAS, City has determined that there is a need for the delineated services; and

WHEREAS, City desires to contract for such services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 EFFECTIVE DATE, DURATION, AND TERM

This Agreement shall be effective on the date it has been signed by every party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

The initial term of this Agreement shall be for thirty-six (36) months from the effective date hereof. After that initial term, this Agreement may be extended for two (2) successive terms

of twelve (12) months each, not to exceed in the aggregate two (2) such extensions, with such extensions to occur on or before the expiration date of the preceding term, and with such extensions being absolutely predicated upon the express written agreement of both parties. Such extensions are permitted only provided Consultant has performed each and every contractual obligation specified in this original Agreement.

City reserves the right to review this Agreement at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

2.01 CONTRACT AMOUNT, PAYMENT FOR SERVICES

In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant in accordance with this section, in payment for services and the Scope of Services deliverables as delineated herein. No reimbursable expenses are authorized in this Agreement.

<u>Component</u>	<u>Cost</u>
 <u>Entrance Exam</u>	
Job Analysis	\$ 2,600.00
Exam Development *	\$ 5,100.00
Travel/Expenses (1 site visit) **	\$ 1,400.00
 <u>Driver Exam</u>	
Job Analysis	\$ 2,600.00
Exam Development *	\$ 5,100.00
Travel/Expenses (1 site visit) **	\$ 0.00
 <u>Lieutenant Exam</u>	
Job Analysis	\$ 2,600.00
Exam Development *	\$ 5,100.00
Travel/Expenses (1 site visit) **	\$ 0.00
 <u>Captain Exam</u>	
Job Analysis	\$ 2,600.00
Exam Development *	\$ 5,100.00
Travel/Expenses (1 site visit) **	\$ 0.00

Battalion Chief Exam

Job Analysis	\$ 2,600.00
Exam Development *	\$ 5,100.00
Travel/Expenses (1 site visit) **	<u>\$ 0.00</u>
<u>Total:</u>	\$39,900.00

* The Exam Development cost of \$5,100.00 shall only be incurred when the City, acting through the Round Rock Fire Chief, orders an exam. The Fire Chief, entirely at his discretion and election, may place an order as needed for any one or more exams at any time during the term of this Agreement. The Exam Development cost shall include either one or two exams (A & B Tests), entirely at the election of the Fire Chief. The \$5,100.00 Exam Development cost shall be inclusive of two exams, if so directed by the Fire Chief to be prepared. The \$5,100.00 cost shall *not* be reduced should only one test be directed by the Fire Chief to be prepared.

** Travel/Expenses (one site visit) shall be performed for all five exams in one comprehensive site visit, and all work to complete the Job Analyses for all five exams shall be done during such one comprehensive site visit. The one site visit shall be made at any time during the term of this Agreement that the Fire Chief schedules said site visit, and such one site visit shall be for three days' duration and shall include, but not be limited to, staff interviews, ride-alongs and observations. The \$1,400.00 cost shall include all expenses, and shall be inclusive of all five exams.

Item Challenge Service \$250/hour

I/O Solutions will provide counsel, deposition and expert testimony services for the purpose of defending the development, validation and administration of selection processes in which it participates, for the following fees associated with such services:

<u>Service</u>	<u>Fee</u>
Expert counsel, deposition or expert testimony provided by a Ph.D. level Industrial/Organizational Psychologist	\$250/hour
Administrative services related to litigation support	\$25/hour

Not-to-exceed total. The total costs to be paid to Consultant shall not annually exceed **Forty Thousand and No/100 Dollars (\$40,000.00)**. Any payments in addition to Forty Thousand and No/100 Dollars (\$40,000.00) shall require a written supplemental agreement

executed by both parties.

Deductions. No deductions shall be made from Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to Consultant.

Additions. No additions shall be made to Consultant's compensation based upon claims, whether paid by City or denied.

3.01 SCOPE OF SERVICES

Consultant shall satisfactorily: (1) complete a job analysis process comprised of the methodological elements of job observation/interview sampling and outcomes, job analysis questionnaire development and review, job analysis questionnaire sampling/distribution/analysis, task-KSAP linkage, and essential task and KSAP results; and (2) based thereon, develop and author custom written examinations, in accordance with Local Government Code Title 5, Chapter 143 "Municipal Civil Service for Firefighters and Police Officers," for City's Fire Department entrance and promotional examinations. The types of exams are listed in Section 2.01.

Consultant's undertakings shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform services in accordance with this Agreement, in accordance with the appended proposal for services, and in accordance with due care and prevailing consulting industry standards for comparable services.

Consultant expressly acknowledges and agrees that this Agreement is not an exclusive arrangement, and that City has the unfettered right at any time to secure similar or identical services from other sources.

4.01 LIMITATION TO SCOPE OF SERVICES

Consultant and City agree that the scope of services to be performed is described herein, and may not be changed without the express written agreement of the parties. Notwithstanding anything herein to the contrary, the parties agree that City retains absolute discretion and authority for all funding decisions, such to be based solely on criteria accepted by City which may be influenced by but not be dependent on Consultant's work.

5.01 REQUIRED DRAFT REPORTS AND FINAL REPORT

Consultant agrees to provide City with any draft reports and a detailed final written report, together with all information gathered and materials developed during the course of work.

Consultant agrees to provide City with additional bound copies of the final written report, if and as requested, with the right to make additional copies being at the sole election of City.

All copies of the written final report will be to specifications as delineated by City.

6.01 INVOICE REQUIREMENTS; TERMS OF PAYMENT

Invoices. To receive payment for services, Consultant shall prepare and submit a series of monthly invoices in a form acceptable to City. Each invoice for professional services shall track the “Scope of Services” category herein, and shall state and detail the services performed, along with documentation for each service performed. All payments to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by City. Such invoices shall conform to the schedule of services and costs in connection therewith. Should additional backup material be requested by City, Consultant shall comply promptly with such request. In this regard, should City determine it necessary, Consultant shall make all records and books relating to this Agreement available to City for inspection and auditing purposes.

Payment of Invoices. City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of invoices, City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 7.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and City or because of amounts which City has a right to withhold under this Agreement or state law. City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant’s net income.

Offsets. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Consultant, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

7.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Consultant will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Consultant may charge interest on an overdue payment at the “rate in effect” on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Consultant, a contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late; or

- B. There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- C. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- D. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

8.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Contractor a written notice of termination at the end of its then-current fiscal year.

9.01 SUPPLEMENTAL AGREEMENTS

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or City Manager action, if City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement, that being twelve (12) months from the effective date hereof. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and City shall not be responsible for actions by Consultant nor for any costs incurred by Consultant relating to additional work not directly authorized by Supplemental Agreement.

10.01 TERMINATION; DEFAULT

Termination: It is agreed and understood by Consultant that City may terminate this Agreement for the convenience of City, upon thirty (30) days' written notice to Consultant, with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this project shall become the property of City upon termination of this Agreement, and shall be promptly delivered to City in a reasonably organized form without restriction on future use, subject to the conditions set forth herein.

Should City subsequently contract with a new consultant for continuation of service on the project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of City and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

Default: Either party may terminate this Agreement, in whole or in part, for default if the party provides the other party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the parties).

If default results in termination of this Agreement, then City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to City, the cost to City of employing another firm to complete the useable work, and other factors will affect the value to City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating party and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

11.01 NON-SOLICITATION

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

12.01 CITY'S RESPONSIBILITIES

Full information: City shall provide full information regarding project requirements. City shall have the responsibility of providing Consultant with such documentation and

information as is reasonably required to enable Consultant to provide the services called for. City shall require its employees and any third parties who are otherwise assisting, advising or representing City to cooperate on a timely basis with Consultant in the provision of its services. Consultant may rely upon written information provided by City and its employees and agents as accurate and complete. Consultant may rely upon any written directives provided by City or its designated representative concerning provision of services as accurate and complete.

Required materials: Consultant's performance requires receipt of all requested information reasonably necessary to provision of services. Consultant agrees, in a timely manner, to provide City with a comprehensive and detailed information request list, if any.

13.01 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, not City's employee. Consultant's employees or subcontractors are not City's employees. This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts as agent for the other party. Consultant and City agree to the following rights consistent with an independent contractor relationship:

- A. Consultant has the right to perform services for others during the term of this Agreement;
- B. Consultant has the sole right to control and direct the means, manner and method by which services required by this Agreement will be performed;
- C. Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement;
- D. Consultant or its employees or subcontractors shall perform the services required hereunder. City shall not hire, supervise, or pay any assistants to help Consultant;
- E. Neither Consultant nor its employees or subcontractors shall receive any training from City in the skills necessary to perform the services required by this Agreement;
- F. City shall not require Consultant its employees or subcontractors to devote full time to performing the services required by this Agreement; and
- G. Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of City.

14.01 CONFIDENTIALITY; MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

The parties recognize and understand that City is subject to the Texas Public Information Act and its duties run in accordance therewith.

All data relating specifically to City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Neither the City nor Consultant will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own proprietary and confidential information.

Notwithstanding anything to the contrary in this Agreement, City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for City and delivered to City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement (other than the Deliverables). Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to Consultant. City shall have a non-exclusive, non-transferable license to use Consultant's Confidential Information for City's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

15.01 WARRANTIES

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industry standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

16.01 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of City or of this Agreement, then and in that event City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to City's satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by City, its directors, employees or agents.

In no event shall Consultant be liable to City, by reason of any act or omission relating to the services provided under this Agreement (including the negligence of Consultant), whether a claim be in tort, contract or otherwise, (a) for any consequential, indirect, lost profit, punitive, special or similar damages relating to or arising from the services, or (b) in any event, in the aggregate, for any amount in excess of the total professional fees paid by City to Consultant under this Agreement, except to the extent determined to have resulted from Consultant's gross negligence, willful misconduct or fraudulent acts relating to the service provided hereunder.

17.01 INSURANCE

Insurance. Consultant, at Consultant's sole cost, shall have and maintain during the term hereof professional liability insurance coverage in the minimum amount of One Million Dollars from a company authorized to do insurance business in Texas and otherwise acceptable to City.

Subconsultant Insurance. Without limiting any of the other obligations or liabilities of Consultant, Consultant shall require each subconsultant performing work under this Agreement to maintain during the term of the Agreement, at the subconsultant's own expense, the same stipulated minimum insurance required in the immediately preceding paragraph, including the required provisions and additional policy conditions as shown below.

Consultant shall obtain and monitor the certificates of insurance from each subconsultant in order to assure compliance with the insurance requirements. Consultant must retain the certificates of insurance for the duration of this Agreement, and shall have the responsibility of enforcing these insurance requirements among its subconsultants. City shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

Insurance Policy Endorsements. Each insurance policy hereunder shall include the following conditions by endorsement to the policy:

1. Each policy shall require that thirty (30) days prior to the expiration, cancellation, on-renewal or any material change in coverage, a notice thereof shall be given to City by certified mail to:
City Manager, City of Round Rock
221 East Main Street
Round Rock, Texas 78664

Consultant shall also notify City, within 24 hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.

2. Companies issuing the insurance policies shall have no recourse against City for payment of any premiums or assessments for any deductibles which all are at the sole responsibility and risk of Consultant.
3. Terms "City" or "City of Round Rock" shall include all authorities, boards, commissions, departments, and officers of City and individual members, employees and agents in their official capacities, or while acting on behalf of the City of Round Rock.
4. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by City, to any future coverage, or to City's Self-Insured Retentions of whatever nature.

5. Consultant and City mutually waive subrogation rights each may have against the other for loss or damage, to the extent same is covered by the proceeds of insurance.

Cost of Insurance. The cost of all insurance required herein to be secured and maintained by Consultant shall be borne solely by Consultant, with certificates of insurance evidencing such minimum coverage in force to be filed with the City.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

Compliance with Laws. Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits and licenses required in the performance of the services contracted for herein.

Taxes. Consultant will pay all taxes, if any, required by law arising by virtue of the services performed hereunder. City is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

19.01 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for this project.

20.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

21.01 LOCAL, STATE AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. City will not do the following:

1. Withhold FICA from Consultant's payments or make FICA payments on Consultant's behalf; or

2. Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
3. Withhold state or federal income tax from Consultant's payments.

22.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: when delivered personally to recipient's address as stated in this Agreement; or three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Consultant:

Industrial/Organizational Solutions, Inc.
1127 South Mannheim Road, Suite 203
Westchester, IL 60154-2562

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO:

City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Consultant.

23.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas. If legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive jurisdiction and venue shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

24.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Consultant and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

25.01 DISPUTE RESOLUTION

If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior

management. If the parties cannot reach a mutually satisfactory resolution, then and in that event any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Consultant shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties.

City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

26.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement, through a process of mutual agreement and negotiation, to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

27.01 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to City and according to generally accepted business practices.

28.01 GRATUITIES AND BRIBES

City may, by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

29.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written

assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

30.01 MISCELLANEOUS PROVISIONS

Time of the Essence. Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each phase of this Agreement within the agreed project schedule may constitute a material breach of this Agreement. Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

Force Majeure. Neither City nor Consultant shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or circumstances beyond its control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Section Numbers. The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

Waiver. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original; and all of which, taken together, shall constitute one and the same instrument. City agrees to provide Consultant with one fully executed original.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated.

INDUSTRIAL/ORGANIZATIONAL SOLUTIONS, INC.

By: 
Printed Name: CHAD C. LEAUEL
Title: PRESIDENT : CEO
Date Signed: 4.27.15

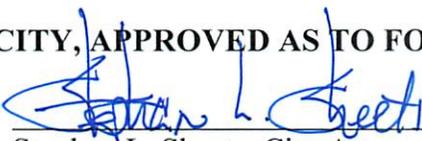
CITY OF ROUND ROCK, TEXAS

By: _____
Alan McGraw, Mayor
Date Signed: _____

FOR CITY, ATTEST:

By: _____
Sara L. White, City Clerk

FOR CITY, APPROVED AS TO FORM:

By: 
Stephan L. Sheets, City Attorney

